

## 4.1 AUDITOR ETHICS

### 4.1.1 Background

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

#### **Adoption of the IESBA Code of Ethics for Professional Accountants**

The development and maintenance of the *Code of Professional Conduct for Registered Auditors* ("the Code"), and *Rules Regarding Improper Conduct* ("the Rules") prescribed for auditors, is the responsibility of the Committee of Auditor Ethics (CFAE). The Code and Rules were approved by the Board and published by the IRBA, and gazetted as Board Notice 89 of 2010 in Government Gazette No 33305 on 18 June 2010. The IRBA adopted the IESBA Code of Ethics for Professional Accountants (2009) under copyright permission from the IFAC<sup>43</sup> and published it as the *IRBA Code of Professional Conduct for Registered Auditors*<sup>44</sup> with additional requirements for auditors in South Africa underlined and in *italics*.

Subsequent amendments to the IESBA Code of Ethics for Professional Accountants are considered by the CFAE prior to adoption by the IRBA. Where considered necessary, subsequent amendments to the IESBA Code (2009), may be re-issued on exposure for public comment in South Africa, before being recommended by the CFAE to the Board for adoption and issue. The Code (Revised 2014) was approved for issue by the Board at its meeting on 18 February 2014, with an effective date of 1 April 2014 for all amendments. Board Notice 25 of 2014, advising of the amendments, was published in Government Gazette No. 37392 on 7 March 2014. Changes in substance are included in the Code.

### 4.1.2 Rules Regarding Improper Conduct

The Rules Regarding Improper Conduct ("**the Rules**") repeal and replace the "Old" Disciplinary Rules 2.1 referred to in section 59(8)(c). The Rules are prescribed by the Board under section 4(1)(c) with effect from **1 January 2011**.

43 Copyright © "This Code is based on Parts A and B of the Code of Ethics for Professional Accountants of the International Ethics Standards Board of Accountants (IESBA), published by the International Federation of Accountants (IFAC) in May 2013 and is used with permission of IFAC. Adaptations to Parts A and B are underlined and in italics in this Code." The SAICA Auditing Handbook includes the IRBA *Code of Professional Conduct for Registered Auditors* ("**the Code**"), and *Rules Regarding Improper Conduct* ("**the Rules**").

44 The IRBA Code and Rules are available for download from the IRBA website ([www.irba.co.za](http://www.irba.co.za)).

## 1. Definitions

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

- 1.1. **"the Act"** means the Auditing Profession Act, No. 26 of 2005 and any expression used in these Rules which is defined in the Act bears, unless the context indicates the contrary, the meaning assigned to it in the Act;
- 1.2. **"Regulatory Board"** means the Independent Regulatory Board for Auditors established by section 3<sup>45</sup>;
- 1.3. **"the Code"** means the Code of Professional Conduct prescribed by the Regulatory Board in terms of section 4(1)(c);
- 1.4. **"firm"**, in the context of these Rules, means:
  - (a) a partnership, company or sole proprietor referred to in section 38<sup>46</sup>;
  - (b) An entity that controls the parties in (a), through ownership, management or other means; and
  - (c) An entity controlled by the parties in (a), through ownership, management or other means.
- 1.5. **"professional services"** in the context of these Rules, means services requiring accountancy or related skills performed by a registered auditor including accounting, auditing, review, other assurance and related services, taxation, management consulting and financial management services. These include but are not limited to:
  - (a) *Audit, review, other assurance and related services:*
    - (i) Financial statement audits, reviews, other assurance services and related services such as regulatory reporting, sustainability, compliance and performance reporting;
    - (ii) Company accounting advisory services such as preparation of accounting records and financial statements in accordance with recognised financial reporting standards and applicable statutes; and
    - (iii) Company statutory services;
  - (b) *Taxation services:*
    - (i) Tax return preparation and submission;

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<sup>45</sup> Section 1 v. *"Regulatory Board"*

<sup>46</sup> Section 1 v. *"firm"*

- (ii) Tax calculations for the purpose of preparing accounting entries;
  - (iii) Tax planning and other tax advisory services; and
  - (iv) Assistance in the resolution of tax disputes;
- (c) Advisory services:
- (i) Accounting advisory and financial management advisory services: accounting support, conversion services for new and revised accounting standards, financial modelling and project management;
  - (ii) Business performance services: business effectiveness, people and change management, operational and business finance;
  - (iii) Internal audit: risk and compliance services, review and monitoring of internal controls, risk management, compliance services, corporate governance and audit committee advisory services;
  - (iv) Corporate finance services: mergers and acquisitions, valuations, infrastructure financing, debt and capital markets - due diligence reviews, transaction services and designated advisor services to listed companies;
  - (v) Corporate recovery services: liquidation and insolvency administration, curator bonis, administration of deceased estates, judicial management and trusteeships;
  - (vi) Financial risk management services: actuarial services, banking and risk advisory, regulatory and compliance services, technical accounting;
  - (vii) Information technology (IT) Advisory: security, privacy and continuity, enterprise resource planning; information system audit services, IT project advisory, governance and performance;
  - (viii) Forensic services: dispute advisory and resolution, ethics and integrity monitoring, fraud risk management, intellectual property and other investigations and regulatory compliance.
- 1.6. **"public practice"** means the practice of a registered auditor who places professional services at the disposal of the public for reward, and "practice" has a similar meaning<sup>47</sup>.
- 1.7. **"registered auditor"** means an individual or firm registered as an auditor with the Regulatory Board<sup>48</sup>.
- 1.8. **"registered auditor in public practice"**, in the context of these Rules, means a registered auditor that provides professional services.

<sup>47</sup> Section 1 v. "public practice"

<sup>48</sup> Section 1 v. "registered auditor"

1.9. **"training contract"** means a written training contract entered into in the prescribed form and registered with the Regulatory Board whereby a prospective registered auditor is duly bound to serve a registered auditor for a specified period and is entitled to receive training in the practice and profession of a registered auditor<sup>49</sup>.

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

## 2. Improper Conduct

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

- 2.1. contravenes or fails to comply with any provision of the Act with which it is the registered auditor's duty to comply;
- 2.2. contravenes or fails to comply with any provision of any other Act with which it is the registered auditor's duty to comply in providing professional services;
- 2.3. has been found guilty in some other forum, including a Court, of any offence involving dishonesty, and in particular (but without prejudice to the generality of the foregoing) theft, fraud, forgery or uttering a forged document, perjury, bribery or corruption;
- 2.4. is dishonest in the performance of any work or duties devolving upon the registered auditor in relation to –
  - 2.4.1 any professional services performed by a registered auditor; or
  - 2.4.2 any office of trust which the registered auditor has undertaken or accepted;
- 2.5. contravenes or fails to comply with any requirements in Auditing Pronouncements prescribed by the Regulatory Board;

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<sup>49</sup> Section 1 v. "training contract"

- 2.6. contravenes or fails to comply with any requirements in the Code;
- 2.7. fails to perform any professional services or duties with such a degree of professional competence, due care and skill as in the opinion of the Regulatory Board may reasonably be expected, or fails to perform the professional services or duties at all;
- 2.8. with intent to evade or to assist any other person to evade any tax, duty, levy or rate whatsoever –
  - 2.8.1 knowingly or recklessly prepares or makes, or assists any other person to prepare or make, any false statement (whether such statement be oral or in writing); or
  - 2.8.2 signs any false statement in relation thereto recklessly or knowing it to be false; or
  - 2.8.3 knowingly or recklessly prepares or maintains any false books of accounts or other records;
- 2.9. permits the registered auditor's name to be used in connection with any estimate of earnings contingent upon future transactions in a manner which may lead to the belief that the registered auditor vouches for the accuracy of the estimate; or in circumstances in which the registered auditor knew, or ought reasonably to have known, that the registered auditor's name was being or would be used in connection with any such estimate of earnings, or failed, within a reasonable time from acquiring such knowledge or from the time when the registered auditor ought reasonably have known of those facts, to take reasonable steps to distance the registered auditor from such estimate and/or to dispel the belief that the registered auditor vouched for the accuracy of the estimate;
- 2.10. seeks, either before or during the period of a training contract of a prospective registered auditor, to impose any restraint whatever on the prospective registered auditor concerned which will apply after the date of termination of the training contract period, or threatens or attempts to enforce any such restraints after such date. The provisions of this rule will not, however, apply so as to prohibit a registered auditor from seeking to restrain a prospective registered auditor, for a period of not longer than one year from the date of the prospective registered auditor's ceasing to be employed by the registered auditor, from soliciting for professional services from an existing client of that registered auditor or from accepting an engagement of any kind from an existing client of that registered auditor;

- 2.11. directly or indirectly stipulates or receives from a prospective registered auditor who is or has been serving under a training contract, or from any other person, any payment, reward, compensation or consideration for agreeing to the cancellation of such training contract - provided that it shall not be deemed a breach of this rule if a registered auditor requires to be or is reimbursed in respect of disbursements actually made by them to the Regulatory Board in connection with a training contract which is subsequently cancelled, and of which disbursements they are able to produce proof to the satisfaction of the Regulatory Board;
- 2.12. fails to answer or to deal with appropriately within a reasonable time any correspondence or other communication from the Regulatory Board or any other person which reasonably requires a reply or other response;
- 2.13. fails to comply within a reasonable time with an order, requirement or request of the Regulatory Board;
- 2.14. fails to resign from a professional appointment when requested by the client to do so and/or fails to transfer all books and papers that are the property of the client and which are or which may come into the registered auditor's possession to the client or to a newly appointed accountant or auditor when requested by the client to do so;
- 2.15. fails after demand to pay any subscription or any fee, levy or other charge payable to the Regulatory Board;
- 2.16. abandons the registered auditor's public practice without previous notice to the registered auditor's clients and without arranging with the clients for the dispatch of the clients' business or the care of the clients' property in the registered auditor's possession or under the registered auditor's control; or
- 2.17. behaves in a manner which tends to bring the auditing profession into disrepute.