

OVERVIEW OF THE AMENDMENTS TO THE AUDITING PROFESSION ACT (UPDATED)

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Introduction

Over the past few years, the auditing profession has been hit by a number of auditing scandals that have led to public scrutiny of the profession and the Independent Regulatory Board for Auditors (IRBA), as the regulator. As part of the IRBA's restoring confidence strategy, in 2018 the Board requested National Treasury to initiate amendments to the Auditing Profession Act 26 of 2005 (the Act) and these were, among others, aimed at:

1. Strengthening the independence of the IRBA;
2. Strengthening the investigating powers of the IRBA;
3. Ensuring the efficiency and effectiveness of the disciplinary processes;
4. Increasing monetary sanctions that can be imposed for improper conduct; and
5. Ensuring the protection and sharing of information under the control of the IRBA.

After extended public consultations and parliamentary deliberations, these amendments have been assented to by the President of the Republic of South Africa; and they came into effect on 26 April 2021, upon publication in the Government Gazette.

An Overview of the Amendments

IRBA Board and Committees

To ensure the independence of the IRBA, the amendments prohibit registered auditors (RAs) and registered candidate auditors from being appointed as members of the IRBA Board, the Investigating Committee and the Disciplinary Committee. The amendments also prohibit these members from sharing, directly or indirectly, in any profits of an RA or any person related to an RA; or receiving payments, excluding pension benefits, from an RA.

While practising RAs are now precluded from serving on the abovementioned structures, the amendments also require the appointment of persons with at least 10 years' experience in auditing and who were formerly registered as auditors. This is to ensure the retention of appropriate experience and skills within these structures. In addition to this, the amendments introduce the mandatory appointment of legal practitioners with at least 10 years' experience in practising law. This requirement is also applicable to the subcommittee of the Board, the Enforcement Committee, previously referred to as the Disciplinary Advisory Committee.

Members of the Board and its subcommittees hold office for a period of three years and this is renewable once, as opposed to the previous two-year term that did not give the Board adequate time to oversee the implementation of its strategies and plans.

Registration Requirements

To maintain the credibility of the profession, conviction for an offence related to theft, fraud, forgery, uttering a forged document, perjury, the Prevention and Combating of Corrupt

Activities Act or dishonesty will be a bar to registration as an auditor or candidate auditor, irrespective of the sentence imposed for such an offence.

In addition, the registration of individuals may only be considered where they have membership with a professional body that is accredited as such by the IRBA. The requirement is aimed at ensuring that registered members are accountable to professional bodies with certain disciplinary powers over them, thus unburdening the IRBA in relation to the enforcement of improper conduct committed by an RA and that does not relate to auditing.

Reportable Irregularities Processes

To ensure the credibility and effectiveness of audit processes, while protecting the process from interference by client management, the amended Section 45 of the Act precludes the removal of an RA who has reported an irregularity to the IRBA, prior to the completion of the reporting process, i.e. the submission of the second report to the IRBA. In the event of the RA resigning from the firm after submitting the first report, but prior to submitting the second report to the IRBA, the auditor must do the necessary handover to the incoming auditor, regardless of when the resignation took effect.

Investigation and Disciplinary Processes

A number of complaints received by the IRBA are non-audit related, and that tends to stretch the IRBA's investigating capacity, leading to protracted investigations. To address this challenge, the amendments empower the IRBA to refer non-audit complaints against RAs to an accredited professional body for investigation and disciplinary processes, provided the matter falls within that professional body's constitution and rules.

The Enforcement Committee will deal with matters against RAs flowing from recommendations made by the Investigating Committee. Where, following an investigation, sufficient grounds exist to charge an RA for improper conduct, the Enforcement Committee can either follow an admission of guilt process or refer the matter to the Disciplinary Committee for a disciplinary hearing. An admission of guilt process will ensure an expeditious resolution of lower risk matters, thus freeing up the capacity of the Disciplinary Committee to deal with high-risk matters.

Due to non-cooperation by audit firms during an investigation of improper conduct, the amendments empower the Investigating Committee to authorise an IRBA official, with the consent of the person apparently in control of the affected premises, to enter and search the premises and seize information required for an investigation. Where consent has not been obtained, the IRBA now has the power to approach the court for a warrant authorising such search and seizure. The IRBA official searching the premises is also empowered to question the person on the premises on any matter that is relevant to the investigation.

While previously only the Disciplinary Committee was empowered to subpoena relevant persons to appear before it to be questioned or to produce any object or information, subpoena powers in relation to obtaining information have now also been extended to the Investigating Committee.

A failure to comply with a subpoena or interference with or hindering the conduct of an investigation is considered an offence. A person found guilty of this offence may be liable, on conviction, to a fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Undeniably, the IRBA has in the past experienced backlogs in scheduling disciplinary hearings, largely due to the limited availability of members appointed to the Disciplinary Committee, and the majority quorum requirements in the previous Act, which meant that only one hearing could proceed at any given time. To address this challenge, the IRBA now has the power to appoint as many Disciplinary Committee members as it may deem necessary. A panel of three members may then be appointed from the Disciplinary Committee members to hear a particular matter. This will improve the efficiency of the IRBA's disciplinary proceedings by ensuring that it is enabled to convene multiple disciplinary hearings at a time, thus ensuring that disciplinary matters are dealt with expeditiously and without undue delay.

In addition to the above, the requirement for a chairperson of a hearing to be a senior advocate or retired judge has been replaced with the requirement for a legal practitioner with at least 10 years' experience practising law. This, of course, addresses the issue of the scarce availability of senior advocates and retired judges. However, the amendments, in a bid to ensure continuous oversight of disciplinary processes by a senior legal practitioner, create a role for a chairperson of the entire Disciplinary Committee. The person in this position will assume an oversight role and the responsibility to appoint members and chairpersons of the panels for all hearings, as well as put measures in place to ensure consistency in the application of disciplinary rules by panel members. The added benefit of this amendment is that it underscores the independence of the committee processes and rulings.

Improved Sanctions

The link between the Adjustment of Fines Act and the maximum fines that can be imposed by the IRBA, through an admission of guilt process or following a disciplinary hearing, has been removed, with the Minister of Finance now empowered to determine and gazette the maximum fines that can be imposed by the IRBA. This will ensure that fines imposed are not linked to broader legislative limitations, which often led to the public outcry about the "paltry sanctions" imposed by the IRBA. The Minister is now placed in a position to make a considered determination as to what would constitute an appropriate maximum monetary sanction for improper conduct. This will be done with the full appreciation of the different standing auditors occupy in society, as well as their role in protecting the investing public.

Further, the amendments introduce the imposition of non-monetary sanctions for improper conduct, and this could be in the form of an order to undertake certain training, implement certain controls in the audit practice, or refrain from doing certain work, among others. The intention is to ensure that sanctions are not only punitive in nature but also rehabilitative.

Notwithstanding the above, the amendments include transitional provisions, which provide for the imposition of sanction, as per the previous Act.

Disclosure and Protection of Information

In appreciation of the nature of the information processed by the IRBA, and in a bid to ensure compliance with the Protection of Personal Information Act, the amendments specifically require the IRBA to take appropriate measures to ensure the protection of personal information in its possession or under its control.

To promote the effectiveness of the IRBA, broader regulatory effectiveness, as well as compliance, while still protecting third-party information, a member of an IRBA committee, employee or an IRBA official is precluded from disclosing information obtained in the performance of their functions to a person not in the IRBA's service, except:

- a. For the purpose of enforcing compliance with this 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 which requires it for the institution or an investigation, with a view to the institution of any disciplinary process or criminal prosecution; and
- d. At the written request of, and to, any appropriate international regulator of audits and auditors that require such information for the purpose of an investigation or a disciplinary process; or for purposes of referring a non-audit matter in terms of Section 48(1A).

On the other hand, and in a bid to promote transparency and accountability, the amendments bring forth a new requirement obliging the IRBA to publish certain minimum information relating to the appointed members of the IRBA Board. The IRBA is also now obliged to publish the outcomes of any matter referred to the Disciplinary Committee for determination, with the discretionary publication only retained for matters concluded via an admission of guilt process. In addition to publication on its website, the IRBA may elect to publish these outcomes in any other form of media.

In addition to the above, the IRBA is required to, within three months of the amendments coming into effect, develop and submit to the Minister, for approval and publication, a regulatory strategy for the performance of its functions.

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About the IRBA

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