

10 August 2018

Submitted electronically to:

kpasiya-mndende@parliament.gov.za

Attention: Ms K Pasiya-Mndende

Dear Ms

Comments on the Property Practitioners Bill, B21-2018

The Independent Regulatory Board for Auditors (IRBA) is both the audit regulator and national auditing standard setter in South Africa. Its statutory objectives include the protection of the public by regulating audits performed by registered auditors, and the promotion of investment and employment in the Republic.

Regarding the request of the Portfolio Committee on Human Settlements for comments on the Property Practitioners Bill, please find attached on page 2 to 6 our previous comment letter (**Attachment A**), which we are re-submitting for your consideration as our significant comments have not been addressed in the Bill.

We have also included a signed PDF version of the above-mentioned comment letter for your reference.

Kindly e-mail us at ivanker@irba.co.za / imtegha@irba.co.za or phone us directly on +27 87 940 8838 or +27 87 940 8860, if further clarity is required on any of our comments.

We welcome an opportunity to meet with you to discuss our comments as well as make ourselves available for a verbal presentation to the Portfolio Committee on Human Settlements.

Yours faithfully,

Signed electronically

Imran Vanker

Director: Standards

Ian Mtegha

Professional Manager: Standards

ATTACHMENT A



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18 May 2017

Submitted electronically to:

Thulani.Khambule@dhs.gov.za

Attention: Mr T Khambule

Dear Sir

Comments on the Property Practitioners Bill, 2016

The Independent Regulatory Board for Auditors (IRBA) is both the audit regulator and national auditing standard setter in South Africa. Its statutory objectives include the protection of the public by regulating audits performed by registered auditors, and the promotion of investment and employment in the Republic.

We appreciate this opportunity to comment on the Property Practitioners Bill, 2016 (the Bill).

Our comments are presented under the following sections:

1. Audit and accounting matters; and
2. Other general matters.

The matters we have raised for your attention would assist to address the possible serious impact on the proper functioning of the Bill. If left unaddressed it would hamper the ability of auditors to meet the public expectations and to comply with the objective of the Bill.

Kindly e-mail us at ivanker@irba.co.za / nbester@irba.co.za or phone us directly on +27 87 940 8838 / +27 87 940 8862 if further clarity is required on any of our comments.

We will also welcome an opportunity to meet with you to discuss our comments, and in particular the concept of accreditation of auditors in the property industry.

Yours faithfully

Bernard Peter Agulhas
IRBA Chief Executive Officer

1. AUDIT AND ACCOUNTING RELATED MATTERS

1.1 Auditor accreditation

- Section 53(1)(b) and (c) of the Bill requires the property practitioner to immediately, after opening a trust account, appoint an auditor and provide the Authority with all information in respect of such auditor.
- In consideration of the public interest, we believe that this section of the Bill should be strengthened to provide for a formal but simple auditor accreditation process. Accreditation results in auditors becoming specialized in the rules and risks facing an industry.
- In the IRBA's experience, auditors of trust accounts often have multiple similar clients where repeat errors or audit quality failures across all such trust audit engagements can occur. This puts the general public who transact with property practitioners at risk.
- As such, we believe that the general public who makes use of the services of property practitioners would be better protected if the Authority were to follow an auditor accreditation process similar to that followed by the Johannesburg Stock Exchange or the Council for Medical Schemes.

1.2 Audit of trust accounts and business accounts

- Section 53(5) of the Bill requires the property practitioner to cause his, her, its trust accounts and business accounts to be audited.
- We agree that both the trust accounts and business accounts of the property practitioner should be audited by the same auditor.
- In performing an engagement, an auditor is required to comply with the International Auditing and Assurance Standards Board's *Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements*.
- An auditor will be required to use different standards when performing the trust accounts and business accounts engagements.
- When performing an engagement on the trust accounts of a property practitioner, it is expected that an auditor will be required to use the International Standard on Assurance Engagements (ISAE) 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ISAE 3000 (Revised)) and he/she will be concluding on compliance with the Bill regarding the maintenance of trust accounts by the property practitioner. It should be noted that there is generally an expectation gap between what the Authority expects the auditor to report regarding non-compliance with the Bill as it relates to the maintenance of trust accounts and what would be expected of the auditor when applying ISAE 3000 (Revised) due to the use of the term "materiality" in ISAE 3000

(Revised). Concluding on the materiality of the non-compliance identified as a result of the procedures performed requires professional judgement. Professional judgement is needed to conclude whether the property practitioner complied with the Bill relating to the maintenance of trust accounts as a whole. As a result, we believe that the Bill should set out what the Authority deems to be material as it relates to the maintenance of trust accounts.

- However, when performing an engagement on the business accounts of a property practitioner it is expected that an auditor will be required to use the International Standards on Auditing (ISAs) and he/she will be concluding on whether the financial statements of the property practitioner are prepared, in all material respects, in accordance with an applicable financial reporting framework.
- We believe that due to the differences explained above, the Bill should differentiate between the two different types of engagements that an auditor is expected to perform.
- As an alternative, the Bill can require the auditor to comply with the *Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements* that is issued by the IRBA from time to time.
- In addition, if the property practitioner is a sole proprietor, and the property practitioner does not operate his/her business as a company or a close corporation it will be difficult, if not impossible for an auditor to audit the business accounts of the property practitioner as there may be no separation between the business and private transactions of the property practitioner. Often the property practitioner will operate his, her, its business and personal transactions out of one bank account. We believe that the Bill should require the property practitioner who is a sole proprietor to keep separate bank accounts for his private and business transactions.

1.3 Section 53(7) of the Bill

- Section 53(7) of the Bill requires that the Authority may order a property practitioner to submit to the Authority an audited statement prepared by the auditor fully setting out the state of affairs of the property practitioners accounting records of his, her, its trust accounts set out in section 53(5)(a) of the Bill.
- The International Framework for Assurance Engagements sets out preconditions for an assurance engagement.
- Two of these preconditions that are required to be exhibited are:
 - The underlying subject matter is appropriate; and
 - The criteria expected to be applied in the preparation of the subject matter information are suitable to the engagement circumstances.
- An auditor is not equipped to perform an assurance engagement unless these preconditions are exhibited and met.

- Section 53(7) does not meet the two preconditions of an assurance engagement as discussed above and as such an auditor cannot perform such an engagement.
- We believe that the following clarity is required to be included in section 53(7) of the Bill so that an auditor can perform such an engagement:
 - Clarity on what the underlying subject matter and the subject matter information is. For example, the historical financial performance for which the subject matter information may be the recognition and measurement of trust account deposits;
 - Clarify the criteria that are benchmarks to measure or evaluate the underlying subject matter, for example, where the criteria may be cash based accounting;
 - Clarify what is meant by “fully setting out the state of affairs”; and
 - Further clarify what type of engagement is expected of the auditor to perform, to meet the objectives of the Bill.
- Furthermore, we believe that that the wording of section 57(3) of the Bill should be clarified to make it clear that:
 - The auditor prepares an auditor’s report; and
 - The property practitioner (and not the auditor) prepares a statement or schedule that fully sets out the state of affairs in respect of the matters referred to in subsection (5)(a).

1.4 Accounting framework

- Section 54(4)(a) of the Bill requires the property practitioner to keep accounting records that are necessary to fairly reflect and explain the state of affairs of the matters set out in section 54(4)(a)(i)-(iii).
- We believe that section 54(4)(a) should be strengthened to set out what financial reporting framework should be used by the property practitioner in the preparation of his, her, its accounting records. An auditor can only express an opinion on financial statements prepared in terms of a recognised financial reporting framework.
- It is expected that a different financial reporting framework could be needed in the preparation of the trust accounts and the business accounts. Each of those accounting frameworks or choices of financial reporting frameworks should be set out in the Bill.

2. OTHER GENERAL MATTERS

2.1 Suggested editorial changes

Editorial changes recommended below are denoted as ~~strike through~~ for words that should be deleted and underlined for words that should be inserted.

- **Section 1 of the Bill: “Authority”** means the Property Practitioners Regulatory Authority established in terms of section 45.
- **Section 53(4) of the Bill:** Any bank which manages trust accounts for purposes of this Act must from time to time as prescribed submit a certificate to the Authority declaring interest ~~in~~ on that account.
- **Section 54(4)(a) of the Bill:** keep in one of the official languages as an address in the Republic the accounting records that are necessary to fairly ~~to~~ reflect and explain the state of affairs-

2.2 Other areas of clarification required

- **Section 53(1)(b):** Section 53(1)(b) says “appoint an auditor as prescribed”. We believe it is necessary to clarify what the form/process/item will be that the Bill is considering prescribing.
- **Section 53(2):** We believe that the Bill should clarify that investments contemplated in section 53(2) of the Bill are protected by the Fidelity Fund.
- **Section 53(4):** We believe that the wording “from time to time” and “investment in that account” should be clarified.
- **Section 53(6):** We believe that the word “late” should be clarified.
- **Section 54(1)(b):** We believe that the word “correspondence” should clarify whether this includes all emails.

2.3 Transitional measures and provisions

- The current Bill together with any further changes that may arise from this consultation process will give rise to operational changes in the management of funds, financial reporting and audit.
- We believe it will be necessary to consider transitional implications, especially as it relates to intervening year-ends, comparative figures and the first-time appointment of auditors.
