

NOTICE

AUDITOR-GENERAL OF SOUTH AFRICA

Public Audit Act, 2004 (Act No. 25 of 2004):

Regulations on Audits by Auditors in Private Practice

I, Thembekile Makwetu, Auditor-General of South Africa, in terms of section 52(1) of the Public Audit Act, 2004 (Act No. 25 of 2004), read together with sections 4(3), 13, 23 and Part 2 of Chapter 3 of the Act, do hereby make the regulations set out in the schedule hereto.

SCHEDULE

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Short title

1. These regulations are the regulations on audits by Auditors in Private Practice.

Definitions

2. In these regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Public Audit Act, 2004 (Act No. 25 of 2004) has the same meaning, and –

"**Act**" means the Public Audit Act, 2004;

"**all relevant criteria**" means any information that the Auditor-General deems necessary to make a determination for purposes of section 4(3) of the Act;

"**Auditor-General**" in the sense of an individual contemplated in paragraph (b) of the definition of Auditor-General in section 1 of the Act, includes any employee of the Auditor-General as institution, designated in writing by the individual appointed as Auditor-General to exercise the powers stipulated in such designation for purposes of these Regulations;

"**engagement partner**" means the individual in the private audit practice who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body;

"**Independent Regulatory Board of Auditors**" means the regulatory board contemplated in section 3(1) of the Auditing Profession Act, 2005 (Act No. 26 of 2005);

"**institution**" means an institution contemplated in paragraphs (a) and (b) of section 4(3); and

"**in writing**" includes any electronic means recognised by the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), and "written" has a similar meaning.

Criteria on audits by auditors in private practice audits

3. (1) This regulation must be read with sections 4(3) and 52(1A)(a) of the Act.

(2) For purposes of section 4(3) of the Act, the Auditor-General must take all relevant criteria into account, which may include –

- (a) the level of public interest in the affairs of an institution;
- (b) an institution's role, nature, size and mandate;
- (c) the risk and impact posed by an institution to the fiscus;
- (d) an institution's leadership structure, functionality and stability;
- (e) an institution's previous audit outcomes; and
- (f) the effort required to perform an audit at an institution and the availability of appropriate resources within the Auditor-General to perform the prospective audit engagement.

(3) The Auditor-General must by applying the criteria contemplated in subregulation (2) determine the institutions where the Auditor-General will perform an audit by utilising its own resources or a combination of its own resources and that of auditors in private practice, and institutions where the Auditor-General will not perform an audit but where the audit will be conducted by auditors in private practice, but if new information comes to the attention of the Auditor-General after having made such a determination, the Auditor-General may after applying the criteria contemplated in subregulation (2) change that determination.

(4) The Auditor-General must prior to the commencement of a financial year of institutions contemplated in section 4(3) of the Act timeously and in writing notify those institutions of its decision contemplated in subregulation (3).

(5) If the Auditor-General has not given the notice contemplated in subregulation (4) to the effect that the Auditor-General itself will conduct an audit of that institution, that institution must commence the process of appointing an auditor in private practice in terms of section 25(1)(b) of the Act.

(6) If the Auditor-General has under section 4(3) of the Act decided not to perform an audit, the institution and the auditor in private practice appointed in terms of section 25(1)(b) must comply with all the provisions and conditions of the determination made by the Auditor-General through a directive issued for this purpose.

(7) If the Auditor-General has under section 4(3) of the Act decided to perform an audit, it must determine -

- (a) the appropriate audit fee recoverable in respect of performing that audit; and
- (b) if applicable as determined by the Auditor-General, the approach to phase-in that audit, taking into account the transitional period during which the previously appointed auditor in private practice performs an audit and prepares to hand over the audit to the Auditor-General.

(8) The Auditor-General may for purposes of subregulation 7(b) -

- (a) second resources to the audit being performed by an auditor in private practice, to gain knowledge and understanding of the audit, the institution and its environment, or to manage any risk that may be of concern to the Auditor-General;
- (b) determine the terms and recovery of the secondment fee in conjunction with the institution and the auditor in private practice;
- (c) require the auditor in private practice to provide access to all activities and information forming part of the audit performed by that auditor in private practice.

(9) For the avoidance of doubt, if the Auditor-General under subregulation 8(a) second resources to an audit performed by a previously appointed auditor in private practice, those resources are not deemed to be engagement partners, and that auditor in private practice remains fully accountable, responsible and in control in respect of that audit despite the presence and access of resources of the Auditor-General or of other persons designated by the Auditor-General, unless the Auditor-General in writing determines otherwise.

Appointment of auditor in private practice

4.(1) This regulation must be read with sections 4(3), 25 and 52(1) of the Act.

(2) If the Auditor-General has under section 4(3) of the Act decided not to perform the audit of an institution contemplated in that section —

- (a) that institution must timeously before the commencement of that audit and not later than the commencement of that institution's financial year, by public procurement and in accordance with its supply chain management policy and process, subject to paragraph (b), select an auditor in private practice registered with the Independent Regulatory Board of Auditors;
- (b) that institution must, prior to appointment of that auditor in private practice by the board or executive authority of that institution and not later than the commencement of that institution's financial year, in writing notify the Auditor-General of the name of the selected auditor in private practice and provide all information required by the Auditor-General as provided in a directive issued by the Auditor-General for this purpose; and
- (c) the Auditor-General must within 14 days of receiving the notification from the institution, or such longer period as may be agreed to, review and in writing notify the institution of its consent or otherwise to such appointment, together with any conditions it may determine.

(3) If the Auditor-General consents to the appointment of the auditor in private practice selected by the institution, the institution must —

- (a) inform the auditor in private practice of his, her or its appointment, together with any conditions determined by the Auditor-General; and thereafter
- (b) together with that auditor in private practice, notify the Auditor-General of the appointment of that auditor in private practice, and acknowledge the conditions subject to which that appointment is made.

- (4) If the Auditor-General rejects the appointment of the auditor in private practice selected by the institution –
- (a) the Auditor-General must in the notice contemplated in subregulation (2)(c) provide reasons to the institution for that decision;
 - (b) the institution may within 14 days of receiving such reasons make written representations to the Auditor-General detailing the mitigations that will be put in place to address the Auditor-General’s concerns identified in the reasons provided; and
 - (c) the Auditor-General must within 14 days of receiving such written representations in writing notify the institution of its decision to consent or not to consent to the appointment of the auditor in private practice selected by the institution.
- (5) If the Auditor-General after implementation of the process contemplated in subregulation (4) rejects the appointment of the auditor in private practice selected by the institution, the institution must –
- (a) with the necessary changes to the periods required, recommence the process contemplated in subregulation (2)(a), to select another auditor in private practice ;
or
 - (b) consider the appointment of the next qualifying auditor in private practice identified during the procurement process contemplated in subregulation (2)(a).
- (6) An appointment in terms of section 25(1)(b) of the Act –
- (a) may not exceed a period of one financial year of an auditee;
 - (b) is annually renewable for a period not exceeding five years from the date of first appointment, subject to the institution obtaining the Auditor-General’s consent to the re-appointment of the auditor in private practise prior to the commencement of the relevant audit and not later than the commencement of the institution’s financial year.

Withdrawal of consent by Auditor-General

- 5.(1) This regulation must be read with section 52(1) of the Act.
- (2) The Auditor-General may subject to subregulation (3) before the expiry of the term of appointment of an auditor in private practice’s by an institution in terms of section 25(1)(b) of the Act withdraw its consent to that appointment.

(3) If the Auditor-General intends to withdraw its consent to the appointment of an auditor in private practice in terms of section 25(1)(b) of the Act, he or she must—

- (a) in writing simultaneously notify the auditor in private practice and the institution of its intention to do so, together with reasons;
- (b) afford the auditor in private practice and the institution an opportunity to within 20 days of receipt of the notification to submit written representations to the Auditor-General; and
- (c) after consideration of written representations, if any, in writing notify the auditor in private practice and the relevant institution of its decision, and if it is withdrawing its consent, the reasons for its decision.

(4) The Auditor-General may consult with the institution and the auditor in private practice on the nature and process of the withdrawal before withdrawing its consent, and the institution and the auditor in private practice must forthwith provide all information requested by the Auditor-General in writing.

(5) If the Auditor-General has withdrawn its consent to the appointment of an auditor in private practice -

- (a) during the period when the audit is being performed, the auditor in private practice must complete that audit, unless the Auditor-General in writing determines otherwise; and
- (b) subject to subregulation 4(a), the institution must commence with the appointment of another auditor in private practice in terms of section 25(1)(b) and in accordance with Regulation 4.

(6) The Auditor-General must report the withdrawal of consent to an appointment in terms of section 25(1)(b) of the Act to –

- (a) the relevant legislature; and
- (b) the Independent Regulatory Board of Auditors.

Discharge of auditor in private practice

6.(1) This regulation must be read with sections 26 and 52(1) of the Act.

(2) If the Auditor-General has under section 4(3) of the Act decided not to perform the audit of an institution contemplated in that section and that institution has appointed an auditor in private practice in terms of section 25(1)(b) of the Act, that institution may discharge that auditor in private practice only if –

- (a) that institution has in writing informed the auditor in private practice of its intention to discharge that auditor in private practice and has provided reasons for its decision;
- (b) that institution has in writing informed the Auditor-General and, if applicable, also that institution's executive authority of its intention to discharge that auditor in private practice and of the reasons for its decision;
- (c) that institution has in writing informed the auditor in private practice of his, her or its right to submit written representations to the Auditor-General within 20 days of receipt of the institution's notice; and
- (d) if applicable, that institution's executive authority has in writing consented to such discharge.

(3) The Auditor-General may consult with the institution, the auditor in private practice being discharged and, if applicable, the executive authority of that institution, on the nature and process of the discharge before giving his or her consent to the discharge, and that institution, that executive authority and that auditor in private practice must forthwith in writing provide any information required by the Auditor-General.

(4) If applicable, the executive authority of the institution must within 14 days of receipt of a request by the Auditor-General in writing inform the Auditor-General of his or her decision in respect of giving consent to the discharge requested by the institution. (5) If the Auditor-General declines to consent to the discharge of the auditor in private practice, it must forthwith after taking that decision in writing inform the institution, the auditor in private practice and, if applicable, the executive authority of that institution of its decision and the reasons for that decision.

(6) If the institution intends to discharge an auditor in private practice during the period when the audit is being performed, the auditor in private practice must complete that audit unless the Auditor-General in writing determines otherwise.

(7) If the Auditor-General and, if applicable, the executive authority of the institution have consented to the discharge of the auditor in private practice, the institution must commence with the process of appointing an auditor in private practice in terms of section 25(1)(b) and in accordance with Regulation 4.

(8) The Auditor-General must report any discharge of an auditor in private practice in terms of section 26(1) of the Act to –

- (a) the relevant legislature; and
- (b) the Independent Regulatory Board of Auditors.

Resignation by auditor in private practice

7. (1) This regulation must be read with section 52(1) of the Act.

(2) If the Auditor-General has under section 4(3) of the Act decided not to perform the audit of an institution contemplated in section 4(3), and that institution appointed an auditor in private practice in terms of section 25(1)(b) of the Act, that auditor in private practice may resign from that audit only if the auditor in private practice has in writing informed that institution as well as the Auditor-General and, if applicable, also that institution's executive authority of his, her or its intention to resign from the audit and has provided reasons for his, her or its decision.

(3) The Auditor-General may consult with the institution, the auditor in private practice who intends to resign from the audit and, if applicable, the executive authority of that institution, on the nature and process of the resignation, and both the institution and that auditor in private practice must forthwith provide any information required by the Auditor-General.

(4) Upon resignation of the auditor in private practice, unless determined otherwise by the Auditor-General, the institution must commence with the process of appointing another auditor in private practice in terms of section 25(1)(b) and in accordance with Regulation 4.

(5) The Auditor-General may report any resignation by an auditor in private practice to the relevant legislature and to the Independent Regulatory Board of Auditors.