



Financial  
Matters  
Amendment  
Bill,  
No.1 of 2019

Submission on the proposed amendments to the  
Auditing Profession Act, 2005

12 February 2019

# Financial Matters Amendment Bill No. 1 of 2019

## Submission on proposed amendments to Auditing Profession Act, 2005 (“APA”)

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- Cover letter
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Legislative process



Search and entry



Unlimited sanctions  
without recourse to  
an appeal



Reduced expertise:  
investigations &  
disciplinary process

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# Matters of Principle

## Legislative process

[Page 1-2 : Par 1.1 ]

### a) Legislative process

- Provision of time to comment
- Notification to public

b) Proposed benchmark : S 10 of the APA requires 30 days notice calling for comment where Rules are amended

c) Communication to audit profession

d) "General Amendment Bill"

e) Constitutional Court precedents reaffirm requirements for meaningful public participation



# Matters of Principle

## Search and entry

[Page 3 : Par 1.2]

### **[Par 1.2.1]**

- International perspective
  - a) Section 2(c) APA
  - b) International benchmarks
- South African position
  - a) Precedents on Section 14 read with 36 of our Constitution
  - b) Search and entry must be justifiable and proportionate



## Matters of Principle

### Search and entry

[Page 4-5 : Par 1.2.1.3]

#### **[1.2.1.3.1] Extended requirement for search and entry is not justifiable and proportionate because:**

- APA currently, together with amended Section 48(5) and 50 affords IRBA sufficient powers
  - a) Section 47 gives IRBA power to inspect
  - b) Auditors may not refuse production of information
  - c) Non-compliance with Section 47 (3) is an offence under Section 54(2)(a)
  - d) Amended 48 (5) allows subpoena of the investigated person
  - e) Amended sections 50(4) – (7), 50(11) (c), 50(12) (a) (iv) and 50(12) (f) provides for similar powers at hearing stage



## Matters of Principle

### Search and entry

[Page 5 : Par 1.2.1.3]

#### **[1.2.1.3.2] The consequence of the current proposal is that not only auditors but also any other person may be subject to the search and entry procedure**

- Interested parties not alerted
- Explanatory Memorandum
  - conflates the subpoena and search and entry processes, and the investigation and disciplinary committees
  - creates the impression that this search and entry process will be confined to registered auditors in circumstances where there is non-co-operation by them
- The powers as drafted are far wider and goes well beyond the stated objective



## Matters of Principle

### Search and entry

[Page 6-8 : Par 1.2.2]

#### **[1.2.2.1] If it is however believed that IRBA's powers must be extended to search and entry notwithstanding the above concerns, we recommend the following:**

- a) Must be the exceptional remedy of absolute last resort
- b) Judicial officer is satisfied that there are reasonable grounds to suspect non-compliance with section 47(3), 50(4), 50(5), 50(11) (c) or 50(12) and that the entry and investigation of the premises are likely to yield information pertaining to such non-compliance
- c) Search and entry may not be conducted on the grounds of mere consent by the respondent
- d) The right to question: Section 24(6)(a)(ii) should be subject to limitations similar to those contained in the Companies Act, section 179(3). *Proposed wording [Page 6]:*
  - allow and advise person of the right to be assisted at the time by an advocate or attorney and allow the person to exercise this right.
- e) The issue of the warrant: The issue of a warrant by a judge or magistrate as contemplated by section 24B should be subject by specific criteria similar to the provisions contained in the Companies Act, section 177. *Proposed wording [Page7-8]*



## Matters of Principle

### Unlimited sanctions with no recourse to an appeal

[Page 8: Par 1.3]

- No monetary limit for the setting of fines by the Minister in section 51B (ii)
- May serve as a deterrent for entry and continued service in the audit profession
- Individuals and firms with lesser economic means may lack desire to remain in such a highly regulated profession with
  - unlimited liability and
  - no indication of what the limit of potential sanctions may be
  - no recourse to an Appeal
- Akin to other legislation, we propose that a maximum be placed on the sanctions that the Minister may impose (e.g. National Credit Act, 2005 or section 74(1) of the Competition Act, 1998.)

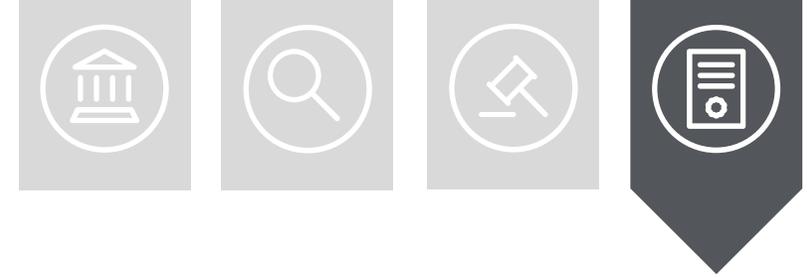


## Matters of Principle

### Reduced expertise - investigations & disciplinary process

[Page 9 : Par 1.4]

- Bill appears to be an improvement on the proposals in the draft Bill but
  - legal and audit profession specialists are still in the minority in the Board and committee structures
  - lack of expertise may slow down processes instead of expediting
  - retired judge as chairperson of the Disciplinary Committee be retained, as the expertise is much needed in complicated matters



## In closing

- As outlined in the Report on the Observance of Standards and Codes (ROSC) : Accounting and Auditing by the World Bank , 2013 adopted by the Minister of Finance in 2014, and echoed by the IRBA in its Annual Report 2018 and in the Standing Committee on Finance on 9 May 2018, there is an increasing need for comprehensive oversight of all parties involved in the financial reporting chain. We support this sentiment.
- In order to truly instil confidence and trust in the South African capital markets, we believe a cohesive regulatory regime which encompasses the main participants of the financial reporting ecosystem – including assurance providers, those charged with governance, and the preparers of financial statements - is crucial.
- We recommend that these amendments to the APA constitutes only the first step in the development of much needed comprehensive oversight. We extend an invitation to the IRBA to work with Deloitte and the profession to assist in the development of this improved regulatory regime.



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