



Mr T Sepanya  
Standing Committee on Finance  
National Assembly  
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08 February 2019

Dear Sirs

**Draft Financial Matters Amendment Bill 2018 (“the bill”): Proposed amendments to the Auditing Profession Act 26 of 2005 (“the APA”)**

We refer to the abovementioned bill which inter alia proposes amendments to the APA which was formally published on 31 January 2019 and calling for comments by 08 February 2019. Our comments, subject to the qualifications below, on the proposed amendments are set out in **annexure A** hereto and is limited to the proposed amendments to the APA.

PricewaterhouseCoopers Incorporated is the largest audit firm in the Republic of South Africa, employing approximately 4300 people across 21 offices. We have a material public interest in the proposed amendments to the APA. We are supportive of the Independent Regulatory Board for Auditors’ (“IRBA”) function and mission to create an ethical, value-driven financial sector that encourages investment, creates confidence in financial markets and promotes sound practices. The IRBA is the statutory body established in terms of the APA, with its primary objective to protect the investing public. It does so by regulating auditors through setting, monitoring and enforcing high quality auditing standards and ethical behaviour.

We are also supportive of proposals to amend the APA - in an effort to allow the IRBA to fulfill its legislative mandate. We caution however that such amendments must balance the IRBA’s mandate and the interests of our capital markets, the profession, and importantly the individuals who are admitted into the profession every year.

We ask that the Standing Committee on Finance (“SCOF”) carefully consider all factors in order to have a balanced view - including submissions from all stakeholders and guard against reactive measures in order to curb a perception of auditors and the audit profession in general - a perception, in our view, which is driven largely by the environment we find ourselves in.

There is no denial that, globally, the auditing profession finds itself at a cross road - there are serious questions around the world being asked of auditors in relation to audit quality, independence and

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market dominance. To this end, elsewhere in the world there has been regulatory reform, including the introduction of Mandatory Audit Firm Rotation ('MAFR'), restriction on the provision of non-audit services to audit clients and restructure of the audit regulator. Whilst we are supportive of change and progression, such change and progression must be rational and lawful - and ultimately aimed at building a healthy and sustainable profession.

We are concerned over the procedure followed by the legislator in publishing the bill and only allowing the public one week to comment. In fact, it was only during the afternoon of Monday 04 February 2019 that the IRBA published notice of the proposed amendments to its members. The majority of the profession would not have had access to the bill, published in the government gazette on 31 January 2019 prior to this date, and thus only allowing, effectively 84 hours to comment on a bill that may have serious implications for stakeholders and the profession as a whole. Nevertheless, we provide our comments and suggestions - as best we could, given the limited opportunity and time frame.

A strong theme in the proposed amendments appears to be a desire by the IRBA to provide the IRBA board with wider powers, especially insofar as disciplinary matters are concerned. As set out in our comments, we are concerned that the process offends the principles of fairness (including fair administrative action in accordance with the Promotion of Administrative Justice Act ('PAJA')). Whilst we are supportive of an efficient disciplinary process, we recommend that the IRBA considers best practice globally, and considers processes and procedures implemented by other regulators and adapt same appropriately whilst ensuring compliance with its obligations in terms of PAJA.

We also encourage the IRBA to think about the ways it will be exercising the proposed enhancements to its regulatory powers. Many of the challenges faced by the auditing profession in South Africa are not unique, and it is important that we all, including the IRBA, learn from international best practice. There is currently, in our view, a significant disconnect between the nature of the matters investigated by the IRBA compared to prominent international regulators.

## **Conclusion**

Nonetheless, we provide our detailed comments on **annexure A**, in tabular form, quoting first the current wording of the section, followed by the proposed new wording, and finally, our comments on the proposed amendments. Our comments are subject to the caveat that, without the reasons why the changes are required, comments are provided in a vacuum without a yardstick to measure the fairness and objectivity against.

We would welcome an opportunity to further discuss our concerns and comments, including our concerns raised above, alternatively, an opportunity to consider the proposed amendments against the backdrop of detailed reasons for the proposed amendments.

Kindly acknowledge receipt.



**pwc**

Yours faithfully

**Fulvio Tonelli**  
**Chief Operating Officer**



**Annexure A: Detailed comments on proposed amendments to the APA**

Section of the APA	Current / "As is" section	Proposed new section	PwC Comments
Section 4	Not applicable (additional wording added).	14. Section 4 of the Auditing Profession Act, 2005, is hereby amended by the insertion after subsection (2) of the following subsection: <u>"(2A) The Regulatory Board must, with the approval of the Minister, determine a policy framework for performing its functions in terms of subsection (1)."</u>	We are supportive that the IRBA determines a policy framework to perform its statutory functions. It is, since the IRBA will be exercising a public function and in compliance with the PAJA suggested that the IRBA involve stakeholders affected by its policy framework and regulation to provide input for ultimate consideration by the Regulatory Board.

<p>Section 11</p>	<p>11. Appointment of members of Regulatory Board          (1) The Regulatory Board consists of not less than six but not more than 10 non-executive members appointed by the Minister.          (2) The Minister must appoint competent persons, who must include registered auditors, to effectively manage and guide the activities of the Regulatory Board, based on their knowledge and experience.          (3) When making the appointments, the Minister must take into consideration, amongst other factors-          (a) the need for transparency and representivity within the broader demographics of the South African population;          (b) any nominations received in terms of subsection (5); and          (c) the availability of persons to serve as members of the Regulatory Board.          (4) Disregarding any vacancy in its membership, not more than 40% of the members of the Regulatory Board may be registered auditors.          (5) Before the Minister makes the appointments, the Regulatory Board must, by notice in the <i>Gazette</i> and in any national newspaper, invite nominations from members of the public.          (6) The Minister may appoint an alternate member for every member of the Regulatory Board, and an alternate member may attend and take part in the proceedings at any meeting of the Regulatory Board whenever the member for whom he or she has been appointed as an alternate is absent from that meeting.</p>	<p>15. The following section is hereby substituted for section 11 of the Auditing Profession Act, 2005:          “Appointment of members of Regulatory Board          11. (1) The Regulatory Board consists of not less than six but not more than 10 non-executive members appointed by the Minister.          (2) The Minister must appoint competent persons [ , who must include registered auditors,] <u>who are independent of the auditing profession</u> to effectively manage and guide the activities of the Regulatory Board based on their knowledge and experience.  <u>(2A) Two members appointed in terms of subsection (2) must include—</u>  <u>(a) a person who was a registered auditor and has at least 10 years’ experience in auditing; and</u>  <u>(b) an advocate or attorney who has at least 10 years’ experience in practicing law.</u>          (3) When making the appointments, the Minister must take into consideration, amongst other factors—          (a) the need for transparency and representivity within the broader demographics of the South African population;          (b) any nominations received in terms of subsection (5); and          (c) the availability of persons to serve as members of the Regulatory Board.          (4) [Disregarding any vacancy in its membership, not more than 40% of the members of</p>	<p>The proposed amendment prohibits registered auditors and registered candidate auditors from being appointed as members of IRBA or persons whom, directly or indirectly received payment from any registered auditor.</p> <p>Whilst it is apparent that the regulator is aiming at creating an “independent” board or to combat what the regulator recently termed “a captured profession”, we are concerned that the proposed amendment will in fact not strengthen governance on the board and strengthen the profession, but in fact harm it.</p> <p>Any regulator setting standards, establishing rules and enforcing high quality audits needs to be aware of matters affecting the profession and it is suggested that input from the profession is encouraged. There are a number of mechanisms to ensure the views of the profession, whom ultimately is being regulated, is heard, by:</p> <ul style="list-style-type: none"> <li>a) including profession elected members on the board (limited to a suggested number of two); alternatively;</li> <li>b) including the chief executive officers of the medium and large</li> </ul>
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	<p>(7) The Regulatory Board, as soon as practicable after the appointment of its members, must publish by notice in the <i>Gazette</i>-</p> <p>(a) the name of every person appointed;</p> <p>(b) the date from which the appointment takes effect; and</p> <p>(c) the period for which the appointment is made.</p>	<p>the Regulatory Board may be registered auditors] <u>None of the members appointed in terms of this section may be a registered auditor or registered candidate auditor.</u></p> <p>(5) Before the Minister makes the appointments, the Regulatory Board must, by notice in the <i>Gazette</i> and in any national newspaper, invite nominations from members of the public.</p> <p>(6) The Minister may appoint an alternate member for every member of the Regulatory Board, and an alternate member may attend and take part in the proceedings at any meeting of the Regulatory Board whenever the member for whom he or she has been appointed as an alternate is absent from that meeting.</p> <p>(7) The Regulatory Board, as soon as practicable after the appointment of its members, must publish by notice in the <i>Gazette</i>-</p> <p>(a) the name of every person appointed;</p> <p>(b) the date from which the appointment takes effect; [and]</p> <p>(c) the period for which the appointment is made; <u>and</u></p> <p><u>(d) the qualifications of every person appointed.</u></p> <p><u>(8) No member may-</u></p> <p><u>(a) share, directly or indirectly, in any of the profits of a registered auditor or registered candidate auditor; or</u></p> <p><u>(b) receive payments from a registered auditor or registered candidate auditor.”.</u></p>	<p>firms, on a rotational basis on the board (limited to a suggested number of two);</p> <p>An alternate proposal to the above is to propose that registered auditors may be members (limited in number) of the board, provided that such members shall have no voting rights on the board. In this way, equitable representation is ensured and the voice of the profession, and those in it, is heard, without impairing the “independence” of the board.</p> <p>It is also suggested that the proposal that no member of the board may receive any payment from auditors or candidate auditors be reconsidered, in light of the fact that many firms have pension / consultancy arrangements with its retired partners. By disqualifying such persons, often vastly experienced individuals, from the Board and allowing the profession to be regulated by individuals whom, with respect, would have little to no experience of the matters affecting the profession, will</p> <p>a) further alienate the profession from the regulator;</p> <p>b) widen the expectation gap that is currently</p>
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			<p>harming the profession;</p> <p>c) undermining the credibility of the board in effectively performing its legislative function.</p>
Section 12	<p>(1) A member of the Regulatory Board appointed in terms of <a href="#">section 11</a> holds office for such period, but not exceeding two years, as the Minister may determine at the time of his or her appointment.</p>	<p>16. Section 12 of the Auditing Profession Act, 2005, is hereby amended by the substitution for subsection (1) of the following subsection:  “(1) A member of the Regulatory Board appointed in terms of section 11 holds office for such period, but not exceeding [two] <u>three</u> years, as the Minister may determine at the time of his or her appointment, <u>but must on termination of the period for which he or she was appointed, continue to hold office for a further period not exceeding three months until his or her successor has been appointed.</u>”</p>	<p>The proposed amendment allows members of IRBA whose term of office is terminating, to continue to hold office for a further period not exceeding three months until the member’s successor has been appointed.</p>



Section 17A	Not applicable (additional wording added).	<p>17. The following section is hereby inserted in the Auditing Profession Act, 2005, after section 17:</p> <p>“Subcommittees of Regulatory Board</p> <p><u>17A. (1) The Regulatory Board must establish an enforcement committee to deal with disciplinary matters, and may establish other subcommittees to assist with the performance of its functions.</u></p> <p><u>(2) The Regulatory Board must appoint the members of a subcommittee from among its members.</u></p> <p><u>(3) The enforcement committee must include—</u></p> <p><u>(a) a person who was a registered auditor and has at least 10 years’ experience in auditing; and</u></p> <p><u>(b) an advocate or attorney who has at least 10 years’ experience in practicing law.”</u></p>	The proposed amendment allows the IRBA board to establish subcommittees, including an enforcement committee which has the power to deal with certain categories of disciplinary matters of improper conduct by registered auditors.
Section 20	(5) Sections 15 and 16 relating to meetings and decisions of the Regulatory Board, respectively, with the necessary changes apply in respect of any committee, except that the committees must meet at least four times a year.	<p>18. Section 20 of the Auditing Profession Act, 2005, is hereby amended by the substitution for subsection (5) of the following subsection:</p> <p>“(5) Sections 15 and 16 relating to meetings and decisions of the Regulatory Board, respectively, with the necessary changes apply in respect of any committee, except that the committees must meet at least [four times] <u>twice</u> a year.”.</p>	<p>The proposed amendment changes the limit on the number of meetings that must be held by committees established by IRBA from four per year to at least two per year.</p> <p>The amendment is supported.</p>





<p>Section 24</p>	<p>24. Investigating and Disciplinary committees  (1) The investigating committee must include individuals with significant legal experience.  (2) The disciplinary committee -  (a) must be chaired by a retired judge or senior advocate;  (b) must consist of a majority of persons not registered as auditors in terms of this Act, but must include registered auditors; and  (c) may include other suitably qualified persons.</p>	<p>19. The following section is hereby substituted for section 24 of the Auditing Profession Act, 2005:  “Investigating committee  <u>24. (1) The investigating committee referred to in section 20(2)(e) must be independent of the auditing profession and include—</u>  <u>(a) two individuals who were registered auditors and each having at least 10 years’ experience in auditing; and</u>  <u>(b) an advocate or attorney who has at least 10 years’ experience in practicing law.</u>  <u>(2) No member of the investigating committee may—</u>  <u>(a) share, directly or indirectly, in any of the profits of a registered auditor or registered candidate auditor; or</u>  <u>(b) receive payments from a registered auditor or registered candidate auditor.”.</u></p>	<p>PwC is supportive of an investigating committee that is balanced and has the requisite expertise both in respect of auditing and fair legal process.</p> <p>A notable distinction in qualification is that, in respect of previously registered auditors, at least 10 years’ “experience in auditing” is required, whilst in the case of advocates or attorneys, 10 years’ experience in practising law is required.</p> <p>We believe that the requirements should be similar, either at least 10 years’ experience in auditing or law, respectively, or alternatively, having been in auditing practice or legal practice for at least 10 years. We are supportive of the former as it would allow the board to appoint experienced academia or, at least in respect of advocates or attorneys, experienced corporate legal counsel to the committee who may be able to serve the committee with their expertise, without having “practised law” or “audited” but who are clearly experienced in auditing and / or law.</p>
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<p>Section 24A to 24C</p>	<p>Not applicable (additional wording added).</p>	<p>20. The following sections are hereby inserted in the Auditing Profession Act, 2005, after section 24:</p> <p>“Powers to enter and search premises</p> <p><u>24A. (1) The investigating committee referred to in section 20(2)(e) may, for the purposes of conducting an investigation, authorise an official of the Regulatory Board to enter any premises—</u></p> <p><u>(a) with the prior consent of—</u></p> <p><u>(i) in the case of a private residence, the person apparently in control of the business reasonably believed to be conducted at the private residence, and the occupant of the private residence or the part of the private residence to be entered; or</u></p> <p><u>(ii) in the case of any other premises, the person apparently in control of the premises, after informing that person that—</u></p> <p><u>(aa) granting consent will enable the official to enter the premises and for the official to subsequently search the premises and to do anything contemplated in subsection (6); and (bb) he or she is under no obligation to admit the official in the absence of a warrant; or</u></p> <p><u>(b) without prior consent and without prior notice to any person if the entry is authorised by a warrant.</u></p> <p><u>(2) The official authorised in terms of subsection (1)(a) to enter a premises also has the authority to search the premises and to do anything contemplated in subsection (6).</u></p>	<p>We believe the proposed power to enter premises and search and seize documents is out of balance with the intended powers of the regulator, and may lead to a gross abuse of constitutional rights.</p> <p>The South African Constitution Act 108 of 1996 recognizes that no public body should have untrammelled powers to search and seize. Such powers are generally conferred in cases only where an offence has occurred and should premises or persons not be searched or property seized, irreparable harm may occur or an offence be committed.</p> <p>Having researched the matter, it appears that foreign audit regulators do not possess the powers of search and seizure. Search and seizure powers are universally limited to those regulators and prosecutors with authority to bring criminal charges.</p> <p>The proposed requirement of “for the purposes of conducting an investigation” is a wide power, and is not an appropriate purpose to grant the regulator such power. The IRBA already has the power, for the purposes of investigation, to subpoena documents and information, and there appears to be no rational reason to extend the powers to such fundamental and,</p>
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		<p><u>(3) The official exercising powers in terms of this section must do so with strict regard to—</u>  <u>(a) an affected person’s right to—</u>  <u>(i) dignity;</u>  <u>(ii) freedom and security;</u>  <u>(iii) privacy; and</u>  <u>(iv) other constitutional rights;</u>  <u>and</u>  <u>(b) decency and good order as the circumstances require, in particular by—</u>  <u>(i) entering and searching only such areas or objects as are reasonably required for the purposes of the investigation;</u>  <u>(ii) conducting the search discreetly and with due decorum;</u>  <u>(iii) causing as little disturbance as possible; and</u>  <u>(iv) concluding the search as soon as possible.</u>  <u>(4) An entry or search of premises in terms of this section must be done, at a reasonable time within ordinary business hours—</u>  <u>(a) unless the warrant authorising it expressly authorises entry at night; or</u>  <u>(b) in the case of a search contemplated in subsection (1)(a)(ii), if the official on reasonable grounds believes that the purpose for which the entry and search is sought, is likely to be defeated by a delay, as close to ordinary business hours as the circumstances reasonably permit.</u>  <u>(5) The official may be accompanied and assisted during the entry and search of any premises for an investigation by a police officer or a member of the investigating committee.</u></p>	<p>with respect, archaic powers, allowing a regulator to, for investigative purposes, impose on constitutional rights.</p> <p>In addition, we don’t believe that obtaining a warrant that authorises a limitation of constitutional rights is justified in instances where the purposes of obtaining a warrant is to investigate:</p> <p style="padding-left: 40px;">a) a contravention of this Act that has occurred, or may be occurring or may be about to occur;</p> <p>and that;</p> <p>entry and investigation of the premises is likely to yield information pertaining to the contravention.</p> <p>We submit that such powers are, and should be, given in limited circumstances to certain regulators which have powers to institute criminal proceedings for offences having been committed (e.g. collusion, money laundering, carrying on the business of a bank etc) and that such powers should only be exercised when there is an offence committed and it is in the interests of justice to enter premises and effect a search and seizure.</p> <p>With respect to the IRBA’s functions, we submit that such proposed powers are out of kilter with its legislative mandate and is</p>
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	<p><u>(6) (a) While on the premises in terms of this section, the official, for the purpose of conducting the investigation, has the right of access to any part of the premises and to any document or item on the premises, and may do any of the following:</u></p> <p><u>(i) Open or cause to be opened any strongroom, safe, cabinet or other container in which the official reasonably suspects there is a document or item that may afford evidence of the contravention concerned or be relevant to the request;</u></p> <p><u>(ii) examine, make extracts from and copy any document on the premises;</u></p> <p><u>(iii) question any person on the premises to find out information relevant to the investigation;</u></p> <p><u>(iv) require a person on the premises to produce to the official any document or item that is relevant to the investigation and is in the possession or under the control of the person;</u></p> <p><u>(v) require a person on the premises to operate any computer or similar system on or available through the premises to—</u></p> <p><u>(aa) search any information in or available through that system; and</u></p> <p><u>(bb) produce a record of that information in any media that the official reasonably requires;</u></p> <p><u>(vi) if it is not practicable or appropriate to make a requirement in terms of</u></p>	<p>not a justified basis to impair or limit the guaranteed constitutional rights enshrined in our Constitution Act 108 of 1996.</p> <p>The proposed amendment, in its current form, appears to be wider than the powers afforded to criminal law enforcement authorities in terms of the Criminal Procedure Act, and, taking into account the proposed powers to issue subpoenas in investigations, is excessive.</p> <p>The process, as described, once a search and seizure has been authorized also does not pass constitutional muster. No provision is made for a person to be legally represented during the search and seizure or questioning of any person on the premises.</p> <p>We submit that the IRBA's current powers to investigate and subpoena documents is sufficient and should not warrant the constitutional rights being infringed or limited.</p>
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		<p><u>subparagraph (v), operate any computer or similar system on or available through the premises for a purpose set out in that subparagraph; and (vii) take possession of, and take from the premises, a document or item that may afford evidence of the contravention concerned or be relevant to the request.</u></p> <p><u>(b) The official must give the person apparently in charge of the premises a written receipt for documents or items taken as mentioned in paragraph (a)(vii).</u></p> <p><u>(c) Subject to paragraph (d), the official must ensure that any document or item taken by the official as mentioned in paragraph (a)(vii) is returned to the person when—(i) retention of the document or item is no longer necessary to achieve the object of the investigation; or (ii) all proceedings arising out of the investigation have been finally disposed of.</u></p> <p><u>(d) A document or item need not be returned to the person who produced it if it is not in the best interest of the public or any member or members of the public for the documents or items to be returned.</u></p> <p><u>(e) A person from whose premises a document or item was taken as mentioned in paragraph (a)(vii), or its authorised representative, may, during normal office hours and under the supervision of the official, examine, copy and make extracts from the document or item.</u></p> <p><u>(7) The official, and any person assisting the official as</u></p>	
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		<p><u>mentioned in subsection (5), may use reasonable force to exercise any power in terms of this section.</u></p> <p><u>Warrants</u></p> <p><u>24B. (1) (a) A judge or magistrate who has jurisdiction may issue a warrant for the purposes of section 24A on application by an official authorised by the Regulatory Board.</u></p> <p><u>(b) The judge or magistrate may issue a warrant in terms of this section—</u></p> <p><u>(i) on written application by the official setting out under oath or affirmation why it is necessary to enter and investigate the premises; and</u></p> <p><u>(ii) if it appears to the magistrate or judge from the information under oath or affirmation that—</u></p> <p><u>(aa) a contravention of this Act has occurred, may be occurring or may be about to occur; and</u></p> <p><u>(bb) entry and investigation of the premises are likely to yield information pertaining to the contravention.</u></p> <p><u>(2) A warrant issued in terms of this section must be signed by the judge or magistrate issuing it.</u></p> <p><u>(3) The official of the Regulatory Board who enters premises under the authority of a warrant must—</u></p> <p><u>(a) if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place on the premises; and</u></p> <p><u>(b) on reasonable demand by any person on the premises,</u></p>	
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		<p><u>produce the warrant or a copy of the warrant.</u></p> <p><u>Disciplinary committee</u></p> <p><u>24C. (1) The Regulatory Board must appoint a disciplinary committee, whose members are independent of the auditing profession, consisting of as many competent members as it may determine necessary to deal with disciplinary hearings in terms of this Act.</u></p> <p><u>(2) The disciplinary committee must have one third of its members being—</u></p> <p><u>(a) individuals who were registered auditors and each having at least 10 years' experience in auditing;</u></p> <p><u>and</u></p> <p><u>(b) advocates or attorneys who each has at least 10 years' experience in practicing law.</u></p> <p><u>(3) No member of the disciplinary committee may—</u></p> <p><u>(a) share, directly or indirectly, in any of the profits of a registered auditor or registered candidate auditor;</u></p> <p><u>or</u></p> <p><u>(b) receive payments from a registered auditor or registered candidate auditor.</u></p> <p><u>(4) The Regulatory Board must appoint a member of the disciplinary committee who is an advocate or attorney as chairperson.</u></p> <p><u>(5) The functions of the chairperson of the disciplinary committee are</u></p> <p><u>to—</u></p> <p><u>(a) appoint a disciplinary hearing panel for each hearing from members of the disciplinary committee; (b) monitor consistency in the application of disciplinary hearing rules by</u></p>	
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		<p><u>disciplinary hearing panels; and</u> <u>(c) facilitate efficient disciplinary hearings.</u> <u>(6) Despite section 20(5), read with section 15(4), when the disciplinary committee convenes a disciplinary hearing under section 50, the hearing must be conducted by a panel of three members including a member referred to in subsection (2)(a) and a member referred to in subsection (2)(b).</u> <u>(7) Members of a disciplinary hearing panel must elect one of the members to chair the proceedings of the disciplinary hearing.</u> <u>(8) A member of the disciplinary committee may not participate in a panel contemplated in subsection (6) if he or she has an interest in a matter considered by the disciplinary hearing panel.</u> <u>(9) A member of the disciplinary committee holds office for a period of three years, or such shorter period as the Regulatory Board may determine, from the date of his or her appointment.</u> <u>(10) A member of the disciplinary committee may be re-appointed at the expiry of a term for a further term not exceeding three years.</u> <u>(11) A person may resign as a member of the disciplinary committee by giving at least three months' written notice to the Regulatory Board, or a shorter period of notice approved by the Regulatory Board.</u></p>	
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		<p><u>(12) A member of the disciplinary committee may not use his or her position or any information by virtue of his or her work for the committee to—</u></p> <p><u>(a) improperly benefit himself or herself or another person;</u></p> <p><u>(b) impede the committee’s ability to perform its functions.”</u></p>	
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<p>Section 37</p>	<p>37. Registration of individuals as registered auditors and registered candidate auditors</p> <p>(1) An individual must apply on the prescribed application form to the Regulatory Board for registration as an auditor or a candidate auditor.</p> <p>(2) If, after considering an application, the Regulatory Board is satisfied that the applicant-</p> <p>(a) has complied with the prescribed education, training and competency requirements for a registered auditor or registered candidate auditor;</p> <p>(b) has arranged for his or her continuing professional development if the applicant is not a member of an accredited professional body;</p> <p>(c) is resident within the Republic;</p> <p>(d) is a fit and proper person to practise the profession;</p> <p>(e) has met any additional requirements for registration as prescribed under section 6, the Regulatory Board must, subject to subsections (3) and (5), register the applicant, enter the applicant's name in the applicable register and issue to the applicant a certificate of registration on payment of the prescribed fee.</p> <p>(3) The Regulatory Board may not register an individual as a registered auditor or registered candidate auditor if that individual-</p> <p>(a) has at any time been removed from an office of trust because of misconduct related to a discharge of that office;</p> <p>(b) has been convicted, whether in the Republic or elsewhere, of theft, fraud,</p>	<p>21. Section 37 of the Auditing Profession Act, 2005, is hereby amended—</p> <p>(a) by the insertion of the following subsection after subsection (1):</p> <p><u>“(1A) An individual may only be registered with the Regulatory Board if he or she is a member of a professional body accredited in terms of section 32(2).”</u>; and</p> <p>(b) by the substitution for paragraph (b) of subsection (3) for the following paragraph:</p> <p>“(b) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery, uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty, other than [theft, fraud or forgery,] <u>an offence</u> committed prior to 27 April 1994 associated with political objectives[, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding such an amount as may be prescribed by the Minister];”.</p>	<p>The proposed amendment is supported, subject to the proposed qualification that offences in terms of Section 34 of the Prevention and Combating of Corrupt Activities Act 2004 (PRECCA) should not disqualify a person from being registered as auditor or candidate auditor.</p> <p>Section 34 of PRECCA places an obligation on a person who knows or “ought reasonably to have known or suspected” an offence in terms of PRECCA has been committed. Thus, persons may be convicted of an offence for “negligently” having failed to identify or suspect an offence was committed and thus failed to report such offence.</p> <p>It is suggested that the list of offences be limited to offences with an element of dishonesty, such as theft, fraud, forgery, uttering, perjury, or an offence in accordance with Chapter 2 and Chapter 3 of PRECCA.</p>
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	<p>forgery, uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty, other than theft, fraud or forgery, committed prior to 27 April 1994 associated with political objectives, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding such an amount as may be prescribed by the Minister;</p> <p>(c) is for the time being declared by a competent court to be of unsound mind or unable to manage his or her own affairs; or</p> <p>(d) is disqualified from registration under a sanction imposed under this Act.</p> <p>(4) For the purposes of subsection (3)(b), the Regulatory Board must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.</p> <p>(5) The Regulatory Board may decline to register as a registered auditor or registered candidate auditor an individual who is an unrehabilitated insolvent, has entered into a compromise with creditors, has applied for debt review or has been provisionally sequestrated.</p>		
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Section 45	Not applicable (additional wording added).	22. Section 45 of the Auditing Profession Act, 2005, is hereby amended by the addition of the following subsection: <u>“(7) If an individual registered auditor has reported an irregularity to the Regulatory Board in terms of subsection (1)—</u> <u>(a) the individual registered auditor may not be removed;</u> <u>and</u> <u>(b) the entity may not remove the registered auditor, until subsection (3) is complied with.”.</u>	The proposed amendment is supported.
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<p>Section 48</p>	<p>48. Investigation of charge of improper conduct  (1) The Regulatory Board must refer a matter brought against a registered to the investigating committee appointed under section 20 if the Regulatory Board -  (a) on reasonable grounds suspects that a registered auditor has committed an act which may render him or her guilty of improper conduct; or  (b) is of the opinion that a complaint or allegation of improper conduct, whether prescribed or not, which has been made against a registered auditor by any person appears to be justified.  (2)  (a) If, in the course of any proceedings before any court of law, it appears to the court that there is prima facie proof of improper conduct on the part of a registered auditor the court must direct a copy of the record of the proceedings, or such part thereof as relates to that conduct, to be sent to the Regulatory Board.  (b) Despite the provisions of any other law, whenever it appears to an appropriate regulator that there is prima facie proof of improper conduct on the part of a registered auditor, the official must forthwith send a report of that conduct to the Regulatory Board.  (c) The Regulatory Board must refer to an investigating committee any record or report received by it under this subsection.  (3) At the request of the Regulatory Board, the</p>	<p>23. Section 48 of the Auditing Profession Act, 2005, is hereby amended—  (a) by the insertion after subsection (1) of the following subsection:  “(1A) <u>Despite subsection (1), the enforcement committee referred to in section 17A may, if considered appropriate, refer a non-audit matter brought against a registered auditor to the relevant professional body accredited in terms of section 32(2) for investigation and disciplinary proceedings.</u>”;  (b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:  “(c) The Regulatory Board must refer to [an] <u>the investigating committee</u> any record or report received by it under this subsection.”;  (c) by the substitution for paragraph (b) of subsection (3) of the following paragraph:  “(b) obtain evidence to determine whether or not in its opinion the registered auditor concerned should be charged and, if so, recommend to the [Regulatory Board] <u>enforcement committee</u> the charge or charges that may be preferred against that registered auditor.”; and  (d) by the substitution for subsections (5), (6) and (7) of the following subsections:  “(5) (a) In investigating a charge of improper conduct the investigating committee may—  (i) require <u>or, if necessary, subpoena</u>, the registered auditor to whom the charge relates or any other person <u>with specific knowledge of the</u></p>	<p>The proposed amendments—(a) allow the enforcement committee to refer a matter brought to the IRBA against a registered auditor to an accredited professional body for investigation and disciplinary proceedings; (b) provide for a power for the investigating committee to subpoena a registered auditor who has been charged for improper conduct or any other person to produce to the committee any information, including but not limited to any working papers, statements, correspondence, books, or other documents, which is in the possession or under the control of that registered auditor or other person and which relates to the subject matter of the charge.</p> <p>The proposed amendment seeks to provide the IRBA board with the power to refer a matter brought against a registered auditor to a professional body accredited in terms of section 32(2) of this Act for investigation. The Regulatory Board must determine the processes and procedure to be applied by a professional body requested to investigate a matter in terms of paragraph (a).”;</p> <p>The proposed requirement that the IRBA Board dictates the process in terms of which accredited bodies investigate matters of potential misconduct is contradictory to the provisions of Section 33(c) of the APA which</p>
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	<p>investigating committee must -</p> <p>(a) investigate the matter; and</p> <p>(b) obtain evidence to determine whether or not in its opinion the registered auditor concerned should be charged and, if so, recommend to the Regulatory Board the charge or charges that may be preferred against that registered auditor.</p> <p>(4) The investigating committee may not question the registered auditor concerned unless the investigating committee informs the registered auditor that he or she -</p> <p>(a) has the right to be assisted or represented by another person; and</p> <p>(b) is not obliged to make any statement and that any statement made may be used in evidence against the registered auditor.</p> <p>(5)</p> <p>(a) In investigating a charge of improper conduct the investigating committee may -</p> <p>(i) require the registered auditor to whom the charge relates or any other person to produce to the committee any information, including but not limited to any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that registered auditor or other person and which relates to the subject matter of the charge, including specifically, but without limitation, any working papers of the registered auditor;</p> <p>(ii) inspect and, if the investigating committee</p>	<p><u>matter under investigation</u> to produce to the committee any information, including but not limited to any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that registered auditor or other person and which relates to the subject matter of the charge, including specifically, but without limitation, any working papers of the registered auditor;</p> <p>(ii) inspect and, if the investigating committee considers it appropriate, retain any such information for the purposes of its investigations;</p> <p>and</p> <p>(iii) make copies of and take extracts from such information.</p> <p>(b) [The provisions of this subsection apply regardless of whether the registered auditor is of the opinion that such information contains confidential information about a client] <u>The obligation to produce any information under subsection (5)(a)(i) may not be excused by reason of any alleged confidential information of a client contained therein.</u></p> <p><u>(c) A subpoena issued in terms of subsection (5)(a)(i) must—</u></p> <p><u>(i) be in the prescribed form;</u></p> <p><u>(ii) be signed by an authorised official of the Regulatory Board;</u></p> <p><u>(iii) be served on the person concerned in a way that would constitute proper service of a subpoena in the High Court.</u></p> <p><u>(d) Service contemplated in paragraph (c)(iii)—</u></p>	<p>determines that such accredited bodies must have adequate measures to discipline its members, where appropriate, and potentially, against the founding documents (constitutions) of such professional bodies accredited with the IRBA.</p> <p>The proposed amendment also does not provide any insight into the requirements for the proposed referral - i.e. what are the factors that the Board will take into account to determine whether the Board will refer the matter to an appropriate regulator?</p> <p>It is suggested that a subpoena as contemplated in the proposed amendment requires the mandatory tender of reasonable costs incurred in producing the documents and information.</p> <p>The provision that any other professional body may take disciplinary or other action against any of its members in accordance with its constitution and rules <u>after the finalisation of the matter by the Board</u> will be prejudicial to members since they may be liable to disciplinary proceedings and action on two occasions, offending the principle that someone may not be tried or punished twice for the same alleged offence.</p>
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	<p>considers it appropriate, retain any such information for the purposes of its investigations; and</p> <p>(iii) make copies of and take extracts from such information.</p> <p>(b) The provisions of this subsection apply regardless of whether the registered auditor is of the opinion that such information contains confidential information about a client.</p> <p>(6) Nothing in this section limits or affects the right of any professional body to take disciplinary or other action against any of its members in accordance with its constitution and rules.</p> <p>(7) The investigating committee must, after the conclusion of the investigation, submit a report stating its recommendations to the Regulatory Board regarding any matter referred to it in terms of this section.</p> <p>(8) The Regulatory Board and investigating committee must in exercising their powers or performing their duties in terms of this section consider the delegation or assignment of such powers and duties in accordance with section 19.</p>	<p><u>(i) on the last known address appearing from the Regulatory Board's records; or</u></p> <p><u>(ii) effected in any manner agreed between the Regulatory Board or the investigating committee and the person or registered auditor</u></p> <p><u>being subpoenaed, constitutes proper service for purposes of this section.</u></p> <p><u>(e) A person who has been issued with a subpoena under subsection</u></p> <p><u>(5)(a)(i) may not without just cause fail to provide the information, book or document specified in the subpoena in his or her possession or custody or control which he or she has been required to produce.</u></p> <p><u>(f) The law relating to privilege, as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court applies, with the necessary changes, in relation to the production of any information, including but not limited to any working papers, statements, correspondence, books or other documents, to the investigating committee.</u></p> <p><u>(g) A person subpoenaed in terms of this section is not entitled to payment by the Regulatory Board for providing information to the investigating committee.</u></p> <p>(6) Nothing in this section limits or affects the right of any professional body to take disciplinary or other action against any of its members in accordance with its constitution and rules <u>after the finalisation</u></p>	
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		<p><u>of the matter by the Regulatory Board.</u></p> <p>(7) The investigating committee must, after the conclusion of the investigation, submit a report stating its recommendations to the [Regulatory Board] <u>enforcement committee</u> regarding any matter referred to it in terms of this section.”.</p>	
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<p>Section 49 to 51</p>	<p>49. Charge of improper conduct</p> <p>(1) The Regulatory Board must charge a registered auditor with improper conduct if the investigating committee recommends that sufficient grounds exist for a charge to be preferred against such a registered auditor.</p> <p>(2) The Regulatory Board must furnish a charge sheet to the registered auditor concerned by hand or registered mail.</p> <p>(3) A charge sheet must inform the registered auditor charged -</p> <p>(a) of the details and nature of the charge;</p> <p>(b) that the registered auditor, in writing, admit or deny the charge;</p> <p>(c) that the registered auditor, together with the admission or denial, submit a written explanation regarding the improper conduct with which charged; and</p> <p>(d) of the period, which must be reasonable but may not exceed 60 days, within which the plea in terms of paragraph (b) must be submitted to the Regulatory Board.</p> <p>(4) If a registered auditor charged admits guilt to the charge, the registered auditor is considered to have been found guilty as charged.</p> <p>(5) The Regulatory Board must on the expiry of the period referred to in subsection (3)(d) refer the charge sheet and any plea received to the disciplinary committee to be dealt with in accordance with section 50, or, where the registered auditor admitted is guilty to the charge, to be dealt</p>	<p>24. The following sections are hereby substituted for sections 49 to 51 of the Auditing Profession Act, 2005:</p> <p>“Process following investigation</p> <p><u>49. (1) After the conclusion of the processes contemplated in section 48, the enforcement committee contemplated in section 17A must, if sufficient grounds exist for a charge of improper conduct to be preferred against a registered auditor—</u></p> <p><u>(a) follow an admission of guilt process if the enforcement committee believes that the improper conduct of the registered auditor does not warrant a sanction contemplated in section 51B(3)(a)(iv) or (v); or</u></p> <p><u>(b) refer the matter to the disciplinary committee for a disciplinary hearing.</u></p> <p><u>(2) The enforcement committee must furnish a charge sheet to the registered auditor concerned by electronic means and registered mail.</u></p> <p><u>(3) A charge sheet must inform the registered auditor charged—</u></p> <p><u>(a) of the details and nature of the charge;</u></p> <p><u>(b) that the registered auditor, in writing, admit or deny the charge;</u></p> <p><u>(c) that the registered auditor, together with the admission or denial, submit a written explanation regarding the improper conduct with which charged; and</u></p> <p><u>(d) of the period, which must be reasonable but may not exceed 30 days, within which the plea in terms of paragraph</u></p>	<p>The proposal that the period to plea may not exceed 30 days will impair the right to a fair hearing and trial. A defendant or respondent</p>
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	<p>with in accordance with section 51.</p> <p>(6) The acquittal or the conviction of a registered auditor by a court of law on a criminal charge is not a bar to proceedings against the registered auditor under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which the registered auditor was acquitted or convicted or any other offence of which the registered auditor might have been acquitted or convicted at the trial on the criminal charge.</p> <p>50. Disciplinary hearing</p> <p>(1) A disciplinary hearing must be conducted by the disciplinary committee constituted in accordance with section 24.</p> <p>(2)</p> <p>(a) The disciplinary committee, for the purposes of this section, must appoint a person to present the charge to the disciplinary committee, which person may be a member of the investigating committee.</p> <p>(b) The disciplinary committee may at any time prior to or during the disciplinary hearing terminate and replace a person referred to in paragraph (a), if the committee is of the opinion that that person is not fulfilling the obligations.</p> <p>(3) The disciplinary committee may at any time prior to the conclusion of a disciplinary hearing amend the charge sheet or a charge on the grounds that an error exists in</p>	<p><u>(b) must be submitted to the Regulatory Board.</u></p> <p><u>(4) If a registered auditor admits guilt to the charge—</u></p> <p><u>(a) the registered auditor is considered to have been found guilty as charged; and</u></p> <p><u>(b) the enforcement committee must immediately refer the matter to be dealt with in accordance with section 51.</u></p> <p><u>(5) If a registered auditor denies guilt or fails to submit a denial or plea, the enforcement committee must, on the expiry of the period referred to in subsection (3)(d), refer the charge sheet and any plea received to the disciplinary committee to be dealt with in accordance with section 50.</u></p> <p><u>(6) The acquittal or the conviction of a registered auditor by a court of law on a criminal charge is not a bar to proceedings against the registered auditor under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which the registered auditor was acquitted or convicted or any other offence of which the registered auditor might have been acquitted or convicted at the trial on the criminal charge.</u></p> <p>Disciplinary hearing</p> <p><u>50. (1) Where a matter has been referred to the disciplinary committee as contemplated in section 49, the enforcement committee must appoint a person to present the charge to the disciplinary hearing panel.</u></p>	<p>must be afforded a reasonable opportunity to prepare a plea to the matter. It is suggested that allowance be granted for the IRBA and the Respondent to agree such longer period, should circumstances dictate, especially in difficult and complicated matters. In practice we have experienced that the IRBA often has extended periods of time to prepare responses and / or consider documentation submitted to it and a period of thirty days, without the ability to extend such period by agreement or application, is, with respect, unreasonable and will impair the right to a fair hearing.</p>
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	<p>its formulation or that a charge is not properly articulated in the original charge sheet.</p> <p>(4) A hearing before the disciplinary committee is open to the public except where, in the opinion of the chairperson of the disciplinary committee, any part of the hearing should be held in camera.</p> <p>(5)</p> <p>(a) The disciplinary committee may, for the purposes of a hearing, subpoena any person -</p> <p>(i) who may be able to give material information concerning the subject of the hearing; or</p> <p>(ii) who it suspects or believes has in his or her possession or custody or under such person's control any information, including but not limited to any working papers, statements, correspondence, books or other documents, which has any bearing on the subject of the hearing, to appear before the disciplinary committee at the time and place specified in the subpoena, to be questioned or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents.</p> <p>(b) A subpoena issued in terms of paragraph (a) must -</p> <p>(i) be in the prescribed form;</p> <p>(ii) be signed by the chairperson of the disciplinary committee or, in that person's absence, by any member of the disciplinary committee; and</p> <p>(iii) be served on the registered auditor concerned</p>	<p><u>(2) A person presenting the charge to the disciplinary hearing panel may at any time prior to the conclusion of a disciplinary hearing apply to the panel to amend the charge on the grounds that an error exists in its formulation or that a charge is not properly articulated in the original charge sheet. (3) A hearing before the disciplinary hearing panel is open to the public, except where in the opinion of the chairperson of the panel any part of the hearing must be held in camera.</u></p> <p><u>(4) A disciplinary hearing panel may, for the purposes of a disciplinary hearing, subpoena any person to appear before the panel at the time and place specified in the subpoena, to be questioned or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or control which relate to the charge.</u></p> <p><u>(5) A subpoena issued in terms of subsection (4) must—</u></p> <p><u>(a) be in the prescribed form;</u></p> <p><u>(b) be signed by an authorised official of the Regulatory Board; and</u></p> <p><u>(c) be served on the person concerned in a manner that constitutes proper service of a subpoena in the High Court.</u></p> <p><u>(6) Service contemplated in subsection (5)(c)—</u></p> <p><u>(a) on the last known address appearing from the Regulatory Board's records; or</u></p> <p><u>(b) effected in any manner agreed between the Regulatory Board or a disciplinary hearing</u></p>	<p>It is suggested that a person wishing to apply to have the charge sheet amended should be required to show good cause as to why the charge sheet should be amended. Absent such a requirement, a respondent's or defendant's right to a fair process will be impaired. The proposed amendment allowing for the charge sheet to be amended on grounds that it is not properly articulated or an error exists, offends the right to a fair hearing. The disciplinary panel, by appointing a person to present the charges to the panel, appoints a <i>de facto</i> prosecutor, who is responsible for presenting the charges to the accused registered auditor and the disciplinary panel. By allowing amendments up to the finalisation of the disciplinary hearing does not allow the registered auditor a fair opportunity to determine with certainty what charges he / she is facing and offends his / her right to a fair hearing.</p> <p>It is suggested that the proposed subpoena to be served on a person to appear as witness include a mandatory tender of reasonable costs incurred by the witness in producing documents and attending at the disciplinary hearing.</p>
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	<p>personally or by sending it by registered mail.</p> <p>(6) The disciplinary committee may retain any information, including but not limited to any working papers, statements, correspondence, books or other documents produced in terms of subsection (5), for the duration of the hearing.</p> <p>(7) The chairperson of the disciplinary committee may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (5).</p> <p>(8) At a hearing the registered auditor charged -</p> <p>(a)</p> <p>(i) may be assisted or represented by another person in conducting the proceedings;</p> <p>(ii) has the right to be heard;</p> <p>(iii) may call witnesses;</p> <p>(iv) may cross-examine any person called as a witness in support of the charge; and</p> <p>(v) may have access to documents produced in evidence; and</p> <p>(b)</p> <p>(i) may admit at any time before the conclusion of the disciplinary hearing that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 49(3)(b) or (c); or</p> <p>(ii) may, in the case where the person makes an admission in terms of subparagraph (i), be regarded as guilty of improper conduct as charged.</p> <p>(9) The person referred to in subsection (2) may during a hearing -</p>	<p><u>panel and the person being subpoenaed, constitutes proper service for purposes of this section.</u></p> <p><u>(7) A disciplinary hearing panel may retain any information, including but not limited to any working papers, statements, correspondence, books or other documents produced in terms of subsection (4), for the duration of the hearing.</u></p> <p><u>(8) The chairperson of a disciplinary hearing panel must call upon and administer an oath to, or take an affirmation from, any witness at the hearing.</u></p> <p><u>(9) At a disciplinary hearing the registered auditor charged—</u></p> <p><u>(a) may be assisted or represented by another person in conducting the proceedings;</u></p> <p><u>(b) has the right to be heard;</u></p> <p><u>(c) may call witnesses;</u></p> <p><u>(d) may cross-examine any person called as a witness in support of the charge; and</u></p> <p><u>(e) may have access to documents produced in evidence.</u></p> <p><u>(10) A registered auditor charged may—</u></p> <p><u>(a) at any time before the conclusion of the disciplinary hearing, admit that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 49(3)(b) or (c); or (b) in the case where the registered auditor makes an admission in terms of paragraph (a), be regarded as guilty of improper conduct as charged.</u></p>	
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	<p>(a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;</p> <p>(b) question any person who was subpoenaed in terms of subsection (5); or</p> <p>(c) call anyone to give evidence or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which such person suspects or believes to have a bearing on the subject of the hearing.</p> <p>(10)</p> <p>(a) A witness who has been subpoenaed may not -</p> <p>(i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;</p> <p>(ii) refuse to be sworn in or to be affirmed as a witness;</p> <p>(iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or</p> <p>(iv) fail to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which he or she has been required to produce.</p> <p>(b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary committee from further attendance.</p>	<p><u>(11) The person referred to in subsection (1) may during a disciplinary hearing—</u></p> <p><u>(a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;</u></p> <p><u>(b) question any person who was subpoenaed in terms of subsection (4);</u></p> <p><u>and</u></p> <p><u>(c) call anyone to give evidence or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which such person suspects or believes to have a bearing on the subject of the disciplinary hearing.</u></p> <p><u>(12) (a) A witness who has been subpoenaed may not—</u></p> <p><u>(i) without just cause, fail to attend the disciplinary hearing at the time and place specified in the subpoena;</u></p> <p><u>(ii) refuse to be sworn in or to be affirmed as a witness;</u></p> <p><u>(iii) without just cause, fail to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her; or</u></p> <p><u>(iv) fail to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which he or she has been required to produce.</u></p> <p><u>(b) A witness must remain in attendance until excused by the chairperson of the disciplinary hearing panel from further attendance.</u></p>	
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	<p>(c) A witness who has been subpoenaed may request that the names of the members of the disciplinary committee be made available to him or her.</p> <p>(d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of any information, including but not limited to any working papers, statements, correspondence, books or other documents, or to the production of such information to the disciplinary committee by any person called in terms of this section as a witness.</p> <p>(e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.</p> <p>(f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing any information, including but not limited to any working papers, statements, correspondence, books or other documents, which he or she is in terms of this section required to give or produce.</p> <p>(11) The record of evidence which has a bearing on the charge before the disciplinary committee, and which was presented before any committee which investigated an event or conduct, is</p>	<p><u>(c) A witness may request that the names of the members of the disciplinary hearing panel be made available to him or her.</u></p> <p><u>(d) The law relating to privilege as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law applies, with the necessary changes, in relation to the examination of any information, including but not limited to any working papers, statements, correspondence, books or other documents, or to the production of such information to the disciplinary hearing panel by any person called in terms of this section as a witness.</u></p> <p><u>(e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.</u></p> <p><u>(f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing any information, including but not limited to any working papers, statements, correspondence, books or other documents, which he or she is in terms of this section required to give or produce.</u></p> <p><u>(g) A person subpoenaed in terms of this section is not entitled to payment by the Regulatory Board for providing information and attending the disciplinary hearing.</u></p> <p><u>(13) If the improper conduct with which the registered auditor is charged amounts to</u></p>	
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	<p>Regulatory Board of the finding.</p> <p>(2) A registered auditor found guilty of improper conduct in terms of this section may -</p> <p>(a) address the disciplinary committee in mitigation of sentence; and</p> <p>(b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.</p> <p>(3)</p> <p>(a) If the registered auditor charged is found guilty of improper conduct, or if the registered auditor admits to the charge, the disciplinary committee must either -</p> <p>(i) caution or reprimand the registered auditor;</p> <p>(ii) impose on the registered auditor a fine not exceeding the amount calculated according to the ratio for five year's imprisonment prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);</p> <p>(iii) suspend the right to practice as a registered auditor for a specific period; or</p> <p>(iv) cancel the registration of the registered auditor concerned and remove his or her name from the register referred to in section 6.</p> <p>(b) The disciplinary committee may impose more than one of the sanctions referred to in paragraph (a).</p> <p>(4) A disciplinary committee may order any person -</p> <p>(a) who admitted guilt in terms of section 49(4); or</p> <p>(b) whose conduct was the subject of a hearing under section 50, to pay such reasonable costs as have been incurred by an investigating committee and the disciplinary</p>	<p><u>(d) 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; or</u></p> <p><u>(e) at the written request of, and to, any appropriate international regulator of audits and auditors, that requires such for the purpose of investigation or a disciplinary process.</u></p> <p>Sanctions in admission of guilt process</p> <p><u>51. (1) If a registered auditor admits guilt as contemplated in section 49(4)(a), the enforcement committee must either—</u></p> <p><u>(a) caution or reprimand the registered auditor; (b) impose a fine on the registered auditor not exceeding the amount determined by the Minister from time to time; or</u></p> <p><u>(c) require the registered auditor to attend appropriate training or any other relevant non-monetary sanction or more than one relevant non-monetary sanction.</u></p> <p><u>(2) The enforcement committee may impose more than one of the sanctions referred to in subsection (1).</u></p> <p><u>(3) A sanction in terms of subsection (1) may be suspended for a specific period or until the occurrence of a specific event, or made subject to any conditions.</u></p> <p><u>(4) The enforcement committee may order a registered auditor who admitted guilt to the charges to pay such reasonable costs as have been incurred in</u></p>	
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	<p>committee in connection with the investigation and hearing in question, or such part thereof as the disciplinary committee considers just.</p> <p>(5) The Regulatory Board may, if it deems it appropriate, publish the finding and the sanction imposed in terms of subsection (3).</p> <p>(6)</p> <p>(a) The Regulatory Board must give effect to the decision of the disciplinary committee.</p> <p>(b) Where an order as to costs has been made under subsection (4), the amount thereof shall be recoverable by the Regulatory Board from the person concerned, and any amount so recovered must be paid into the funds of the Regulatory Board.</p>	<p><u>connection with an investigation, or such part thereof as the enforcement committee considers just.</u></p> <p><u>(5) The enforcement committee may, if considered appropriate, request the Regulatory Board to publish the name of the registered auditor who admitted guilt, the charge and the sanction imposed in terms of subsection (1) or (2) and a cost order in terms of subsection (4).</u></p> <p><u>(6) (a) The Regulatory Board must give effect to the decision of the enforcement committee.</u></p> <p><u>(b) Where an order as to a fine or costs has been made under subsection (1), (2) or (4), the amount thereof is recoverable by the Regulatory Board from the person concerned, and any amount so recovered must be paid into the funds of the Regulatory Board.”.</u></p>	
Section 51A	<p>51A. Application of certain provisions to registered candidate auditors</p> <p>Sections 48, 49, 50 and 51 apply to registered candidate auditors with the necessary changes.</p>	<p>25. The following section is hereby substituted for section 51A of the Auditing Profession Act, 2005:</p> <p>“Application of certain provisions to registered candidate auditors</p> <p>51A. Sections 48, 49, 50, [and] 51 <u>and 51B</u> apply to registered candidate auditors with the necessary changes.”.</p>	<p>Section 51A is to be amended to include a reference to the inserted section 51B.</p>



<p>Section 51B</p>	<p>Not applicable (additional wording added).</p>	<p>26. The following section is hereby inserted in the Auditing Profession Act, 2005, after section 51A:</p> <p>“Sanctions in disciplinary hearing process</p> <p><u>51B. (1) After the conclusion of a disciplinary hearing contemplated in section 49(1)(b), the disciplinary hearing panel must—</u></p> <p><u>(a) within 30 days decide whether or not the registered auditor is guilty as charged and inform the relevant parties in writing of this decision;</u></p> <p><u>(b) within 30 days after the guilty finding determine the sanction taking into account any aggravating or mitigating circumstances; and</u></p> <p><u>(c) within five days after determining the sanction inform the relevant parties in writing of the final outcome of the disciplinary hearing.</u></p> <p><u>(2) A registered auditor found guilty in terms of subsection (1)(a) may—</u></p> <p><u>(a) address the disciplinary hearing panel in mitigation of sentence; and</u></p> <p><u>(b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.</u></p> <p><u>(3) (a) If the registered auditor charged is found guilty, or if the registered auditor admits to the charges, the disciplinary hearing panel must either—</u></p> <p><u>(i) caution or reprimand the registered auditor;</u></p> <p><u>(ii) impose a fine not exceeding the amount determined by the Minister from time to time;</u></p> <p><u>(iii) require the registered auditor to attend appropriate training or any other relevant non-monetary sanction or more than one relevant</u></p>	<p>It should be borne in mind that there is no right of appeal provided in this bill against the findings of the disciplinary committee. Given the potential implications, including disqualification from practice or significant financial penalties as may be determined by the Minister from time to time, it is recommended that a right of appeal be provided for. Since the IRBA is an administrative body created by statute, an aggrieved respondent only has the power of administrative review under the PAJA - with review only possible in certain circumstances - thus creating a situation where an incorrect finding on the</p>
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		<p><u>non-monetary sanction; (iv) cancel the registration of the registered auditor concerned and remove his or her name from the register referred to in section 6; or</u>  <u>(v) disqualify the registered auditor from registration as a registered auditor on a temporary or permanent basis.</u>  <u>(b) The disciplinary hearing panel may impose more than one of the sanctions referred to in paragraph (a).</u>  <u>(c) A sanction in terms of paragraph (a) may be suspended for a specific period or until the occurrence of a specific event, or made subject to any conditions.</u>  <u>(4) The disciplinary hearing panel may order any registered auditor found guilty or who admitted guilt to pay such reasonable costs as have been incurred in connection with the investigation and the disciplinary hearing, or such part thereof as the disciplinary hearing panel considers just.</u>  <u>(5) The Regulatory Board must publish the name of the registered auditor found guilty, the finding and the sanction imposed in terms of subsection (3) and a cost order in terms of subsection (4).</u>  <u>(6) (a) The Regulatory Board must give effect to the decision of the disciplinary hearing panel.</u>  <u>(b) Where an order as to a fine or costs has been made under subsection (3)(a)(ii) or (4), the amount thereof is recoverable by the Regulatory Board from the person concerned, and any amount so recovered must be</u></p>	<p>merits cannot be appealed because it doesn't fall within the purview of an administrative review.</p> <p>The proposed amendment provides for costs to be ordered by the disciplinary</p>
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		<p><u>paid into the funds of the Regulatory Board.”</u></p>	<p>panel against a person whose conduct was subject to the hearing - which costs are to include the costs of investigation. No provision is made to limit the ability to grant a costs order only against someone whom was found guilty - i.e. the panel may grant a costs order against an innocent party. The section also does not make provision for a costs order to be granted against the IRBA if it is unsuccessful in a hearing. It is suggested that the section be amended to provide that the panel has the power and ability to make a costs order as it deems fit (i.e. against the losing party or, if circumstances permit or provide, against the successful party if their conduct was of such a nature to warrant a costs order).</p>
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<p>Section 53</p>	<p>53. Offences relating to disciplinary hearings</p> <p>(1) Subject to section 50(4) a person is guilty of an offence if -</p> <p>(a) having been duly summoned under section 50, the person fails, without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until excused from further attendance by the chairperson of the disciplinary committee;</p> <p>(b) having been called under section 50, the person refuses to be sworn or to affirm as a witness or fails without sufficient cause to answer fully and satisfactorily to the best of the person's knowledge and belief all questions lawfully put concerning the subject of the hearing; or</p> <p>(c) having been called under section 50 and having possession, custody or control of any information, including but not limited to any working papers, statements, correspondence, books or other documents, refuses to produce it when required to do so.</p> <p>(2) A witness before a disciplinary committee who, having been duly sworn or having made an affirmation, gives a false answer to any question lawfully put to the witness or makes a false statement on any matter, knowing the answer or statement to be false, is guilty of an offence.</p> <p>(3) Any person who wilfully hinders any person acting in the capacity of a member of a disciplinary committee in the</p>	<p>27. The following section is hereby substituted for section 53 of the Auditing Profession Act, 2005:</p> <p>"Offences relating to investigation and disciplinary process</p> <p><u>53. (1) A person is guilty of an offence if he or she –</u></p> <p><u>(a) without just cause, refuses or fails to comply with any reasonable request by an official authorised by the Regulatory Board in connection with the conduct of an investigation;</u></p> <p><u>(b) interferes with or hinders the conduct of an investigation or a disciplinary process;</u></p> <p><u>(c) fails, without sufficient cause, to comply with a subpoena in terms of section 48 or 50;</u></p> <p><u>(d) having been called under section 50, refuses to be sworn or to affirm as a witness or fails without sufficient cause to answer fully and satisfactorily to the best of the person's knowledge and belief all questions lawfully put concerning the subject of the hearing; or</u></p> <p><u>(e) having been duly sworn or having made an affirmation under section 50, gives a false answer to any question lawfully put to the witness or makes a false statement on any matter, knowing the answer or statement to be false.</u></p> <p><u>(2) A person convicted of an offence under this section is liable to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment."</u></p>	<p>The proposed amendment makes it an offence to fail to comply with a subpoena or interfere with or hinder the conduct of an investigation, and a person found guilty may be liable on conviction to a fine or imprisonment for a period not exceeding five years or to both the fine and imprisonment. The proposed amendment is supported, subject to comments in relation to proposed search and seizure powers, which we believe should be removed.</p>
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	<p>exercise of any power conferred upon that person by or under section 51 is guilty of an offence.</p> <p>(4) A person convicted of an offence in a court of law under this section is liable to a fine or to imprisonment for a period of five years or to both a fine and such imprisonment.</p>		
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<p>Section 57A</p>	<p>Not applicable (additional wording added).</p>	<p>28. The following section is hereby inserted in the Auditing Profession Act, 2005, after section 57:          “Protection of personal information  <u>57A. (1) The Regulatory Board must ensure that appropriate measures are taken in respect of personal information in its possession or under its control to prevent—</u>  <u>(a) loss of, damage to or unauthorised destruction of the information; and (b) unlawful access to or processing of personal information, other than in accordance with this Act and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).</u>  <u>(2) In order to give effect to subsection (1) the Regulatory Board must take reasonable measures to—</u>  <u>(a) identify all reasonable and foreseeable internal and external risks to personal information in its possession or under its control;</u>  <u>(b) establish and maintain appropriate safeguards against the risks identified;</u>  <u>(c) regularly verify that the safeguards are effectively implemented; and</u>  <u>(d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.”</u></p>	<p>The proposed amendment requires IRBA to take appropriate measures in respect of personal information in its possession or under its control.</p> <p>This amendment is supported.</p>
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<p>Transitional Measure applicable to the APA</p>	<p>Not applicable (additional wording added).</p>	<p>29. If a registered auditor or registered candidate auditor— (a) has been charged with improper conduct before the commencement of this Act, the matter must be dealt with in terms of the Auditing Profession Act, 2005, before its amendment by this Act; (b) committed an act of improper conduct but has not been charged before the commencement of this Act, the matter must be dealt with in terms of the Auditing Profession Act, 2005, after its amendment by this Act, except that the sanctions applicable at the time of the act of improper conduct must be applied.</p>	<p>The proposed amendment provides for a transitional measure in respect of a registered auditor charged for an improper act committed before the commencement of this Act and where a registered auditor committed an act of improper conduct but has not been charged at the commencement of this Act.</p> <p>This amendment is supported.</p>
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