

8 February 2019

The Committee Secretaries

Standing Committee on Finance

Attention: Ms Teboho Sepanya

Email: tsepanya@parliament.gov.za

Dear Madam

**RE: COMMENTS ON THE DRAFT FINANCIAL MATTERS AMENDMENT BILL
(GOVERNMENT GAZETTE NUMBER 42160 OF 16 JANUARY 2019) INSOFAR AS IT
RELATES TO THE AUDITING PROFESSION ACT (“Draft Bill”)**

1. By way of general comment to the Draft Bill insofar as it relates to the Auditing Profession Act:
 - 1.1. The time period for comments to the Draft Bill, being 12h00 on Friday 8 February 2019, is wholly inadequate for the profession to make meaningful comments on the proposed amendments. This is especially significant since the Draft Bill contains a right of search and seizure which was not in the public domain in the previous version of the Draft Bill and is contrary to the constitutionally guaranteed right to public participation in the legislative process.
 - 1.2. On this point, IRBA has only just notified the auditing profession by a general written communication dated 4 February 2019 that the Chairman of the Standing Committee on Finance has called for public comments on the Draft Bill, with written submissions due no later than 12h00 on Friday, 8 February 2019, and that public hearings will be conducted in Parliament on Tuesday, 12 February

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2019. Unfortunately, given the limited time period available, RSM has also been unable to submit our written comments by 12h00 today.

- 1.3. The manner in which the Draft Bill has been accelerated is completely inappropriate and does not allow sufficient time to consider the far-reaching amendments contained in the Draft Bill.
2. Amendment of section 24A, 24B, and 24C of the Auditing Profession Act 26 of 2005 (paragraph 20 of the Draft Bill):
 - 2.1. In our view, the provisions dealing with the “*power to enter and search premises*” detailed section 24 A, “*warrants*” detailed in section 24 B and “*disciplinary committee*” detailed in section 24 C should be removed from the Draft Bill. Our reasons are set out below.
 - 2.2. The provisions dealing with the power to enter and search premises is an extensive power given to an investigating committee of the Regulatory Board. How has IRBA evidenced that these powers are necessary in a constitutional democracy? Where is the evidence that search and seizure provisions are necessary, given that there are established procedures under civil law in order to obtain the required formation?
 - 2.3. The investigating committee is a subcommittee of the Regulatory Board. The investigating committee authorizes “*an official of the Regulatory Board*” to enter any premises. This person is not trained in matters relating to search and seizure.
 - 2.4. To further illustrate the point:
 - 2.4.1. The official is entitled to enter any premises with the prior consent of the person in occupation or in control of the residence/premises. In the case

of entering a private residence, there is no requirement in terms of section 24A(1)(a)(i) to indicate to such person that “*he or she is under no obligation to admit the official in the absence of a warrant*”.

- 2.4.2. The official in exercising their powers must do so with “*dignity, freedom and security, privacy, and other constitutional rights, and decency and good order...*” Would such official be able to determine the nature and extent of such rights?
- 2.4.3. The official is further required to search “*only such areas or objects as are reasonably required for purposes of the investigation;..... Conducting the search discreetly and with due decorum; Causing as little disturbance as possible;*” How is the official to know (or to distinguish) whether information is of a personal and confidential nature, or whether the information relates to the matter at hand or other matters relating to third parties? Whether the official has transgressed these requirements will be evident when the affected person or the third party take the official and the Regulatory Board to court.
- 2.5. As such, we foresee that the official in exercising the powers of search and seizure, may ride rampant over the rights of the affected person and/or the rights of third parties *inter alia* to confidentiality, freedom and security, dignity, privacy, etc. This in turn would lead to litigation by the affected person against the official and the Regulatory Board. It goes without saying that the majority of the funding received by the Regulatory Board is from the auditing profession. It would be extremely unfair and inequitable to request the auditing profession to fund this type of expenditure.
- 2.6. We are not aware of any other legislation regulating a professional body which grants the power to an authorized person to enter and search the premises of

the professional who is subject to the provisions of such Act, for example, the Healthcare Professions Act, the Legal Practice Act, the Engineering Profession Act.

3. Amendment of section 49-51 of the Auditing Profession Act 26 of 2005 (paragraph 24 of the Draft Bill)
 - 3.1. Section 50(2) regarding the amendment to the charge sheet on the ground that an error exists in its formulation or that charges are not properly articulated in the original charge sheet – this would have costs implications to the Regulatory Board and would necessitate a postponement.
 - 3.2. Section 50 (4) grants the panel the right of subpoena. The registered auditor or person subject to the disciplinary process should likewise have the right of subpoena.

Please feel free to contact the writer to discuss any aspects of this Memorandum.

Yours faithfully

A handwritten signature in black ink that reads "Pinnock".

Liz Pinnock

Director: Head Group Legal