

Ref# 712531/js

8 February 2019

For attention: Ms Teboho Sepanya

Parliament

Submitted electronically: tsepanya@parliament.gov.za

Dear Ms Sepanya

Financial Matters Amendment Bill, Bill 1 of 2019

The South African Institute of Chartered Accountants (SAICA) is the home of chartered accountants in South Africa – we currently have over 44,000 members from various constituencies, including members in public practice ($\pm 30\%$), members in business ($\pm 50\%$), in the public sector ($\pm 5\%$), education ($\pm 2\%$) and other members ($\pm 13\%$). In meeting our objectives, our long-term professional interests are always in line with the public interest and responsible leadership. SAICA is currently the only professional accountancy organisation that has been accredited by the Audit Regulator in South Africa, the Independent Regulatory Board for Auditors (IRBA).

We welcome the opportunity to comment on the Financial Matters Amendment Bill (Bill 1 of 2019). Our comments in the annexure is confined to the proposed amendments to the Auditing Profession Act, No.26 of 2005 (APA) on pages 7 to 19 of the Bill.

We also would like to note and thank the drafters of the Bill for taking our previous comments into consideration for this version of the Bill.

We would appreciate the opportunity to address the committee in person on the 12th of February 2019.

Please do not hesitate to contact us should you wish to discuss any of our comments. You are welcome to contact Juanita Steenekamp (juanitas@saica.co.za) or Welsh Gwaza (welshg@saica.co.za)

Yours sincerely

Freeman Nomvalo
Chief Executive Officer
South African Institute of Chartered Accountants (SAICA)

SAICA'S APPROACH TO RESPOND TO THE BILL

SAICA's approach to informing its members of the proposed amendments, and to gather information to inform our comment letter can be summarised as follows:

- SAICA communicated the Financial Matters Amendment Bill to its members through its social media and submitted it to various interested committees, due to the short period for comment.
- Our overall comments and comments on specific themes are described under sections A and B respectively.

A. OVERALL COMMENTS

We would like to thank the Department for taking note of our previous comments and the subsequent changes to the bill.

We do note that the period for comments on this Bill was very short and we believe that more time should have been provided for comments. Although the call for comments were released on 28 January 2019, the Bill was only available for public viewing on the 31st of January 2019 with a comment deadline of 8 February 2019. The short comment period is not conducive for registered auditors and other interested parties to duly consider the proposed amendments and the impact they may have on the profession and other relevant stakeholders.

It is not entirely clear from the draft Bill what the objective and purpose of the amendments are in all instances and what specific problems or challenges the Bill is intended to address. Although the accompanying Memorandum provides some general information in this regard, there are various instances where respondents' ability to provide comprehensive comments may be limited, since the proposed changes refer to or imply, inter alia, criteria to be set, processes to be determined and matters to be referred to if deemed appropriate.

We do not question the IRBA's right and duty to review its processes and make revisions to improve efficiency and effectiveness as a responsible regulator. The proposed amendments may very well have positive outcomes in the context of the issues or challenges that it addresses, but because the draft Bill does not set out a complete picture, some assumptions have to be made in commenting on the proposed changes to specific sections.

In the absence of a fuller understanding of the specific problems or challenges which the draft Bill is intended to address and their impact, some of the proposed amendments could even be seen to diminish or dilute the functions of the Regulatory Board (the board) and introduce a risk that the outcome of some of the processes could be open for challenge.

We also believe that the amendments to the Bill could have been an opportunity to also amend other sections that could be clarified.

B. COMMENTS ON SPECIFIC THEMES

Reference to a policy framework

Amendment of section 4 of the APA

Section 4(2A) refers to a 'policy framework'. We question whether a framework is required as the Act is clear on the duties of the Regulatory Board.

It should be clarified what the intention of the policy framework is and what information it will contain. The policy framework should be publicly available and go through a public comment process in the same manner as the IRBA Disciplinary Rules and any amendments thereto.

Members of the Regulatory Board

Amendment of section 11 of the APA

As stated in section 11(2), we agree that it is important that the members of the Regulatory Board should, collectively, have appropriate knowledge and experience in auditing, but suggest that criteria be developed to indicate the extent of knowledge and experience required. We would be concerned with how the Regulatory Board will effectively function without such knowledge and experience.

We further agree that members of the board should be independent, as required in section 11(4), but do not necessarily agree that the board members may not include registered auditors. SAICA analysed how boards of international regulators are constituted and determined that all the members of these boards are in most instances independent of the profession. Independent of the profession does not necessarily mean that all the members are non-practitioners, for example some members have not been responsible and accountable (i.e., performed) an audit for a certain number of years. In a small number of instances the majority of the board members were non-practitioners.

It is therefore not clear what problem the amendment is meant to solve, section 11(4) of the APA as it currently stands can achieve everything that the IRBA is trying to include in the proposed amendment as well as flexibility, should it be required in the future (and therefore such amendment appears to be inconsequential).

Continuing to hold office

Amendment of section 12 of the APA

We agree with the possible extension to hold office for a further three months' period after serving for a three-year term. Should the successor not be appointed in the three months, this might create an unforeseen vacancy as the appointment from the duly appointed office might not be completed within that period. There is no manner prescribed on how to deal with this situation and perhaps consideration should be given to ensuring that the appointment of the replacement is done within the prescribed time-period.

Subcommittees

Insertion of section 17A of the APA

Section 17A states that the Regulatory Board must create a subcommittee, which is the enforcement committee to deal with disciplinary matters and the Regulatory Board can create other subcommittees. We are not clear what the relationship between the subcommittees and the committees established under section 20(1) will be and why the enforcement committee is not a committee of the Regulatory Board as established under section 20(1). Further, clarity is required as to the mandate of the Disciplinary Committee and the Enforcement committee as it would appear that there is duplication of functions.

Investigating committee

Amendment of section 24 of the APA

The amendment in section 24(1) states that the investigating committee must include two individuals who were registered auditors with at least 10 years' experience and an advocate or attorney with 10 years' experience, As section 20(3) states that a committee can consist of as many members as the Regulatory Board deems necessary, this would seem to limit the appointment to two people who were registered auditors and one advocate or attorney and other qualified people would be included.

Powers to enter and search premises

Amendment of section 24A of the APA

The inclusion of section 24A is new to the Bill and this needs to be balanced with the Constitutional right to privacy and other rights as set out in the Constitution. The *enter and search* powers as included in the Bill appear to be quite extreme and allows the Regulatory Board's inspector right to access any premises. The official authorised by the Regulatory Board is entering the premises for the purposes of conducting an investigation. There is, up to this point no proof that the registered auditor has committed an offence. The proposal also allows the authorised official to enter "any premises" which would not just be limited to the registered auditors' home, a client or any other person known to the registered auditor.

The rights to enter and search is normally included in criminal cases investigated under the Criminal Procedures Act and not for other type of offences. With regards to the Registered Auditor, the Auditing Profession Act (APA) already allows for the Regulatory Board to inspect a registered auditor's practice and documents.

The proposals seem to be very extreme and allow this authorised official powers which is not balanced by the registered auditor's rights. The registered auditor seems to be investigated in a manner that is usually only used in criminal procedures.

Disciplinary committee

Insertion of section 24C

The proposal states that one-third of the members of the disciplinary committee must be individuals who were registered auditors AND attorneys or advocates. It does not state one-third must be individuals who used to be registered auditors and one-third needs to be attorneys.

Therefore the question arises on what the qualifications / experience of the other two-thirds must be. In terms of practical application if one member is an ex-registered auditor, one member is an attorney and the other 4 members is accountants, if the attorney resigns, the disciplinary committee would not meet the minimum requirements in the Act in terms of compilation and would be unable to function until a new appointment is made. As every disciplinary hearing requires an individual who were a registered auditor and an attorney/advocate the minimum requirements might need to be revisited.

Individual registered with IRBA must be a member of an accredited body

Insertion of section 37(1A) of the APA

Membership of an accredited body is not currently required for registration with the Regulatory Board. The change might affect current membership as members are not required to be registered with SAICA (current accredited body) to be a registered auditor. Practical issues will need to be considered such as cancellation of SAICA membership due to certain circumstances such as the non-payment of fees or serious disciplinary sanction. The impact on this on the membership of the individual registered auditor would need to be considered as well as the legality of any audit reports signed as a registered auditor while not registered with SAICA and whether IRBA registration will automatically have to be cancelled should membership with SAICA lapse.

Reportable irregularities

Amendment of section 45 of the APA

We agree with the amendment made to Section 45 as it aligns with the IRBA Guide for Registered Auditors, Reportable Irregularities (RI Guide). It is appropriate for the auditor to complete the reporting process before resigning or being removed as auditor of an entity.

Although we support the non-removal of the auditor we believe that notice should be taken of the Companies Act, No 71 of 2008's requirements. The Companies Act, 2008 requires that the auditor is appointed by shareholders, and the reporting of an irregularity would be linked to the auditor's relationship with management. The removal of the auditor by shareholders cannot be held back by the APA as the shareholders might have a different approach to the removal of the auditor and the appointment of another auditor. In this instance, clarity would have to be provided regarding the conflict between the Companies Act and the APA.

Since the effective date of the APA and the implementation of the RI Guide, there have been discussions at the Committee for Auditing Standards (CFAS), a standing committee of the IRBA, in respect of some difficulties in implementing the reportable irregularity requirements (for example, linked to the matter of liability). The members of CFAS have previously submitted proposed amendments to the Secretariat that could assist with implementation. It is suggested that these proposed amendments be considered while the APA is being amended and that the legislator should consult with the IRBA in this regard.

Investigations – Referring matters to a professional body

Amendment of section 48 of the APA

In terms of the amendment in section 48(1A), the Regulatory Board may, if it deems it appropriate, refer a matter brought against a registered auditor to a professional body accredited in terms of section 32(2) for investigation and disciplinary proceedings.

SAICA is currently the only professional body that is accredited by the IRBA (although we recognise that there may be other accredited professional bodies in future, also taking into account ongoing developments regarding the comprehensive regulation of the accountancy profession).

The SAICA by-laws currently do allow for the fact that the SAICA Professional Conduct Committee may not pursue any matter referred to the IRBA in terms of By-law 19.2 or any other matter affecting an accused that may be dealt with by the IRBA but where the IRBA has stated that it is not competent or it declines to institute proceedings then SAICA can pursue the matter.

We have the following concerns with this proposed amendment, also in the context that the draft Bill is not sufficiently clear in this regard and one therefore has to make certain assumptions:

- The scope of the matters that are proposed to be referred to an accredited professional body should be specified – it currently refers to “non-audit matters”. We would request clarity on whether this would include any services that a registered auditor provides that is not an audit as defined. Clarification is also required on whether this would include any services provided by a registered auditor in a non-audit practice.
- An important consideration would also have to be what the professional body is able to practically accommodate. As mentioned, above, a concern was raised that a statutory body such as the IRBA may not be able to delegate its obligations to discipline registered auditors to a voluntary membership body such as SAICA, which does not have the same powers of investigation as the IRBA does. For example, SAICA is only able to obtain information from a complainant and from members and associates.
- While SAICA may request documentation and attendance at a hearing from its members, SAICA does not have powers of subpoena as the IRBA does and this will be a challenge in terms of investigating and finding evidence to successfully prosecute complex matters. In the event that the IRBA refers the matter to the accredited body for investigation, would such referral automatically result in the accredited body being delegated with the powers of search and seizure as envisaged in the proposed section 24A, and warrants in terms of the proposed section 24B.
- It has to be considered whether the professional body has appropriate and sufficient resources to perform this function.

- The additional costs involved to perform this function is of concern to SAICA and the question arises on how will SAICA be responsible to cover these costs, for example, the additional staff and disciplinary committee meetings that will be required. Funding for potential applications for judicial review through the courts also need to be planned for, as one complex application for judicial review may involve a substantial cost to defend and even where a legal costs order is granted, the successful party is not able to recover 100% of the costs spent in defending a review. In short, costs contributions by the IRBA towards the accredited body to whom a matter has been referred should be considered.
- SAICA as an independent body can also come to the conclusion not to investigate a particular matter. It should be clarified whether the Regulatory Board will be satisfied with the professional body's decisions and whether feedback will be required. However, the IRBA should not have the power to review the disciplinary investigations and proceedings conducted by the accredited body.
- Should the Bill require the professional body to sanction the registered auditor, the sanction will have to be in line with the SAICA requirements and again we are concerned with regards to SAICA's powers to sanction members who are registered auditors in their performance of non-audit services. It is unclear as to the weight or importance, if any, which the IRBA will place on such disciplinary sanctions.