

# AUDITING PROFESSION AMENDMENT BILL [B2-2020]

*Briefing to Standing Committee on Finance and  
Select Committee on Finance*

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**national treasury**

Department:  
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# Background (1)

- Bill seeks to amend Auditing Profession Act, 2005 to address challenges and limitations that Independent Regulatory Board for Auditors (IRBA) faces in discharging its regulatory and oversight responsibilities especially in light of current state of auditing and accounting professions
- Amendments proposed in Bill were contained in Financial Matters Amendment Bill (already an Act, i.e. *Financial Matters Amendment Act 18 of 2019*) when it was introduced in Parliament
- During processing of Financial Matters Amendment Bill, Standing Committee on Finance, National Assembly, decided on 7 March 2019 not to proceed with amendments to Auditing Profession Act since it was not possible to process amendments in view of very limited time available before 5<sup>th</sup> term of Parliament ends
- Amendments proposed in this Bill are same as those contained in Financial Matters Amendment Bill and have been subjected to public comment as part of Financial Matters Amendment Bill

# Background (2)

- Amendments proposed in this Bill **are the same** as those contained in Financial Matters Amendment Bill
- When Financial Matters Amendment Bill was before Standing Committee on Finance (SCOF), NA of 5<sup>th</sup> Parliament, certain stakeholders in public submissions raised concerns regarding proposed search & seizure provisions
  - On SCOF's direction, NT started to engage these stakeholders but did not conclude this since amendments to Auditing Profession Act were not proceeded with
  - Following public submissions & hearings on this Bill, NT will continue with this engagement should the Committees so direct

# Overview of amendments

- Bill proposes amendments to Auditing Profession Act, 2005, to
  - strengthen governance of IRBA and its investigating and disciplinary processes
  - provide for
    - ✓ power to enter and search premises and to subpoena persons with information required for investigation or disciplinary process
    - ✓ power to issue warrant for purposes of entering and searching of premises
    - ✓ processes following investigations
    - ✓ duty to disclose information
    - ✓ sanctions in admission of guilt process and following disciplinary hearing
    - ✓ criminal offences relating to investigation and disciplinary process
    - ✓ protection personal information

# Strengthening governance - Board (1)

- To ensure that IRBA performs its functions within a defined policy framework, propose amendment requiring IBRA to determine, with ministerial approval, such framework **(clause 2)**
- To strengthen IRBA's independence and address conflict of interest of board members
  - propose exclusion of registered auditors & candidate auditors from appointment as board members
  - propose prohibition on board members from
    - ✓ sharing directly/indirectly in profits of registered auditors/candidate auditors
    - ✓ receiving payments from registered auditors/candidate auditors **(clause 3)**

# Strengthening governance - Board (2)

- To avoid a situation that Board does not quorate when terms of Board members end, propose amendment that a member may continue for further period up to three months
  - This will allow filling of vacancies without affecting Board's proper functioning **(clause 4)**
- Currently Board committees are required to meet four times a year
  - To enable flexibility, propose meetings at least twice a year **(clause 5)**
- Critical that IRBA has a dedicated & independent Board committee to deal with investigations of conduct by registered auditors and candidate auditors
  - Propose that the Board comprise of persons of high integrity and therefore it is necessary that provision regulating their conduct is contained in Bill **(clause 6)**

# Disciplinary & Enforcement Committees

- Currently the disciplinary committee is overburdened by number of disciplinary cases of auditors
  - to alleviate burden of committee, propose to enable IRBA to appoint as many members of disciplinary committee as it considers appropriate and constituting a panel from these members to deal with disciplinary cases
- Members of disciplinary committee should be persons of high integrity and their conduct should also be regulated
  - proposed amendment to prohibits member of committee from using his/her position to improperly benefit him/herself or some else or to impede committee's work (new s24A)
- To further alleviate burden on disciplinary committee, proposes establishment of enforcement committee with powers to deal with certain categories of disciplinary matters of improper conduct (new s24B) **(clause 7)**



# Registration requirements for auditors

- Propose amendment that membership of accredited professional body is prerequisite for registration as auditor/candidate auditor
- As with many other professions, auditing profession requires high ethical standards
  - Current prohibition on registration as auditor/candidate auditor of individual convicted of offence relating to dishonesty is linked to penalty without option of fine
  - Propose prohibition conviction of such offence regardless of penalty

**(clause 8)**

# Reporting of irregularities

- Since auditors have responsibility to report irregularities to IRBA, risk of removing relevant auditor exists
  - Bill proposes prohibition on removal of registered auditor before auditor completes process of reporting irregularities to IRBA (**clause 9**)
- Enforcement committee may refer non-audit matter brought against auditor to relevant professional matter for investigation and disciplinary processes (**clause 10**)

# Enhancing investigating processes (1)

- For investigation into alleged improper conduct by auditors to be thorough and effective, it is important that certain powers are given to investigating committee within confines of Constitution
  - Power to subpoena documents is important and necessary mechanism required to obtain evidence
  - Propose an amendment is to empower investigating committee to subpoena auditor charged with improper conduct or any other person to submit to investigating committee documents regarding the charge (**clause 10**)

# Enhancing investigating processes (2)

- For purposes of conducting thorough investigation into alleged improper conduct by auditor, in some instances may be necessary that the investigator gains access to premises and for this warrant is generally required
- Bill requires consent or warrant issued by a judge/magistrate to enter and search premises during investigation of alleged improper conduct
- Bill contains procedures regarding search and seizure to be conducted with strict regard to constitutional rights as well as decency and good order

**(clause 11)**

# Enhancing disciplinary processes

- Once investigation into alleged improper conduct has been completed, different processes are proposed to expedite disciplinary process
  - Bill proposes that if investigation indicates sufficient grounds that auditor be charged for improper conduct by
    - following admission of guilt process by enforcement committee **or**
    - referring matter to disciplinary committee for hearing
  - Where matter is referred to disciplinary committee, panel will be appointed for each case, instead of disciplinary committee having to deal with all cases
- To ensure that panel of disciplinary hearing is sufficiently empowered in discharging its functions, provision is proposed for panel to subpoena a person to appear before it  
**(clause 12)**

# Sanctions following guilty findings

- Where admission of guilt process is followed, Bill proposes sanctions which may be imposed by enforcement committee, e.g.
  - caution or reprimand
  - imposition of fine, based on maximum amount determined by Minister
  - training

## **(clause 12)**

- Auditing Profession Act currently empowers disciplinary committee to impose fine not exceeding amount calculated according to ratio for five year's imprisonment, prescribed in terms of Adjustment of Fines Act, 1991, on a registered auditor who is found guilty following disciplinary hearing. Fines which have been determined in terms of Adjustment of Fines Act, are too low and do not make required impact as deterrent
- Sanctions to be imposed following disciplinary hearing, includes same sanctions that enforcement committee may impose
  - In addition also cancellation of registration or disqualification from registration on temporary or permanent basis

## **(clause 14)**

# Offences, protection of information & transitional measures

- To demonstrate that improper conduct by auditor is not to be tolerated, Bill proposes amendments which make it an offence to fail to comply with subpoena or to interfere with or hinder conduct of investigation
  - A person found guilty of this offence may be liable on conviction to fine or imprisonment for period not exceeding five years or to both such fine and imprisonment (**clause 15**)
- To safeguard information obtained during performance of functions in terms of Auditing Profession Act propose
  - prohibition on disclosing information, except where so required by other legislation
  - provisions for IRBA to protect personal information (**clause 16**)
- Transitional measures are proposed for where auditor
  - was charged with improper conduct committed before amendments take effect and
  - committed improper conduct before amendments take effect, but not been charged (**clause 17**)

***Ro livhuwa/ Thank you/Re a  
leboga/ Dankie***