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Auditing Profession Amendment Bill, No.2 of 2020

Submission on the proposed amendments to the Auditing Profession Act, 2005 14 October 2020

#### Auditing Profession Amendment Bill No. 2 of 2020

Submission on proposed amendments to Auditing Profession Act, 2005 ("APA")

#### Overview of Deloitte submission

- Cover letter
- Appendix A : Matters of Principle (pages 1 7 of written submission)
- 1.1 Balancing the powers of the IRBA with adequate recourse to the auditor and inclusion of an **Appeal** process;
- 1.2 A comprehensive review is needed on the consistency in which the IRBA Board committees structure, -processes and composition are legislated;
- 1.3 Lack of audit professional expertise on the Board of the IRBA;
- 1.4 Reduced expertise in the disciplinary and investigations processes;
- 1.5 Unlimited sanctions;
- 1.6 Delegation of investigations and disciplinary proceedings to Professional Bodies;
- 1.7 If it is believed that IRBA's existing powers must be extended to include entry and search powers, Parliament should follow a consistent approach as approved in other legislation in Parliament.
- Appendix B : Detailed matters
- Appendix C: Search and entry
- Appendix D: Search and entry research

Discussed further below



## Balancing the powers of the IRBA

[Page 1 : Par 1.1 ]

- Intrusive punitive measures;
- Lack of concomitant correction of procedural and constitutional balance.

Recommendation:

Inclusion of an **Appeal** process to Court for auditors consistent with other regulatory provisions of other professions is needed.



### Review of consistency in the way IRBA processes are legislated [Page 1-2 : Par 1.2]

 A comprehensive review is needed on the consistency in which the IRBA Board committees structure, -processes and composition are legislated.

Recommendation:

- Functions and duties of all committees should be in the main Act;
- Processes should all be contained in the Regulations.

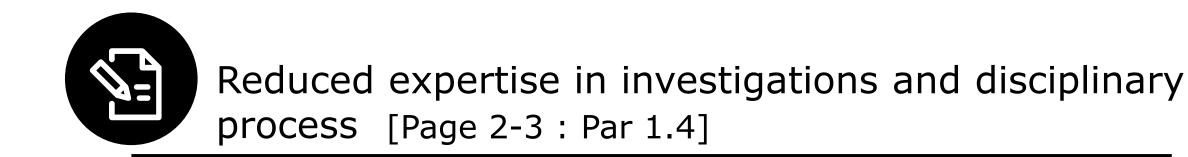


## Auditor expertise is needed on the Board of IRBA [Page 2 : Par 1.3]

- Audit profession specialists are lacking on the IRBA Board and committee structures;
- A lack of audit expertise may slow down processes instead of expediting;
- IRBA should display encouragement and confidence in its own professional population.

Recommendation:

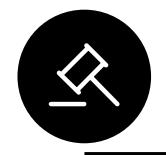
Registered auditors must serve on the IRBA Board to bring current professional skill, experience and knowledge.



 Lack of legal expertise may slow down processes instead of expediting.

Recommendation:

 The requirement of a retired judge as chairperson of the Disciplinary Committee should be retained, as the expertise is much needed in complicated matters.



#### Unlimited sanctions [Page 3 : Par 1.6]

- No monetary limit for the setting of fines by the Minister in section 51B (ii);
- May serve as a deterrent for entry and continued service in the audit profession;
- Individuals and firms with lesser economic means may lack desire to remain in such a highly regulated profession with
  - unlimited liability; and
  - no indication of what the limit of potential sanctions may be;
  - no recourse to an **Appeal**

Recommendation:

• We propose that a maximum be placed on the sanctions that the Minister may impose akin to other laws (Examples are : National Credit Act, 2005 or section 74(1) of the Competition Act, 1998.

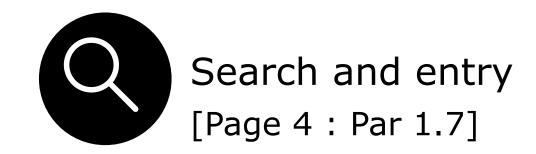


# Delegation of investigations and disciplinary proceedings to Professional Bodies [Page 3 : Par 1.6]

- It is arguable that IRBA, as a state owned entity and subject to the Promotion of the Administrative Justice Act 3 of 2000 (PAJA), has the authority and legal power to "outsource" its powers under the APA to a voluntary membership association such as SAICA.
- SAICA is not subject to the APA or the PAJA and participants in the proceedings will not be afforded the protections of S 57 of the APA and PAJA.
- The amendments do not stipulate what a "non-audit" matter constitutes nor does it stipulate the proceedings that will apply to the accused who is entitled to a just administrative process.

Recommendation:

Further consultation and an impact assessment is needed as the rights of individual participants in the process are affected.



Recommendation:

Notwithstanding the recommendations and consultations with the State Law Advisor, if it is still believed that IRBA's existing powers must be extended to include entry and search powers, Parliament should follow a consistent approach on the topic as approved by Parliament in the Property Practitioners Bill in 2019 and others (FICA, TPA) coupled with the corrective measures to bring constitutional and procedural balance such as an **Appeal**.

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