

AUDITING PROFESSION AMENDMENT BILL [B 2—2020]

RESPONSE TO PUBLIC SUBMISSIONS
13 NOVEMBER 2020



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



DELEGATION

- Independent Regulatory Board for Auditors (IRBA)
 - Ms Jenitha John, Chief Executive Officer
 - Ms Jillian Bailey, Director Investigations
 - Ms Rebecca Motsepe, Director Legal Services
- National Treasury (NT)
 - Ms Karen Maree, acting Accountant-General
 - Adv Empie van Schoor, Chief Director Legislation
 - Adv Ailwei Mulaudzi, Director Fiscal & Intergovernmental Legislation
 - Mr Nkanyiso Sikobi, Financial Stability unit

DOCUMENTS SUBMITTED

- Public consultation report (Comments matrix)
- Auditing Profession Act showing proposed amendments
- Socio Economic Impact Assessment

RESPONSES TO SUBMISSIONS

- Comment matrix consists of
 - Submissions of stakeholders and NT & IRBA's responses & where applicable, proposed amendments
 - Technical refinements proposed by NT & IRBA
 - Organised according to the order of clauses in the Bill
- National Treasury & IRBA consulted SAICA, Deloitte and Ernst & Young on certain key issues raised in their submissions to Standing Committee on Finance
- Some comments proposed to be considered in future review of the Act, e.g. expanding scope to include accountants and mandatory rotation rule
- Important that proposed areas of amendment in Bill to be considered as soon as possible to
 - Strengthen governance of Board
 - Improve investigating and disciplinary processes

KEY ISSUES RAISED IN PUBLIC SUBMISSIONS

- Governance matters
- Disciplinary committee and panels
- Referral of non-audit matters to professional bodies
- Search and seizure powers
- Sanctions - determination of maximum fine
- Reconsideration of disciplinary decisions
- Protection & disclosure of information

KEY ISSUE 1 – GOVERNANCE MATTERS (Sec 11 in Cl 3 of Bill) p47 of comment matrix

- Composition
 - **Stakeholder comment:** include currently registered auditors on Board and increase legal representation
 - **Response:** include currently registered auditors on Board may impede IRBA's independence and also result in IRBA's membership with IFRA withdrawn
 - **Proposed amendment:** increase number of formerly registered auditors and legally qualified persons from one to two

KEY ISSUE 1 – GOVERNANCE MATTERS (Sec 11 in Cl 3 of Bill) p47 of comment matrix

- Related persons
 - **Stakeholder comment:** non sharing of profits or interest with a registered auditor or any person related to registered auditor
 - **Response:** supported
 - **Proposed amendment:**
 - (8) No member may—
 - (a) share, directly or indirectly, in any of the profits or interests of a registered auditor or any person related to a registered auditor; or
 - (b) receive payments, excluding pension benefits, from a registered auditor.
 - (9) For purposes of subsection (8)(a) ‘related’ means persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c), read with section 2(2), of the Companies Act, 2008 (Act No. 71 of 2008).

KEY ISSUE 1 – GOVERNANCE MATTERS

(Sec 4 in Cl 2 of Bill)

- **Stakeholder comment:**
 - Currently Bill provides for IRBA to determine policy framework for performing its functions in terms of section 4(1), with Ministerial approval
 - This means that IRBA requires Ministerial approval to proceed with policy framework and time frame is proposed
- **Response – propose following amendments:**
 - “(3)(a) The Regulatory Board must [**with the approval of the Minister,**] determine a **[policy framework]** regulatory strategy for performing its functions in terms of subsection (1).
 - (b) The Regulatory Board must submit the regulatory strategy to the Minister for approval within three months after the date that the Auditing Profession Amendment Act, 2020, takes effect.
 - (c) The Minister-
 - (i) may, after consulting the Regulatory Board, make amendments to the strategy referred to in paragraph (b); and
 - (ii) must publish in the *Gazette* the approved regulatory strategy within six months after the date that the Auditing Profession Amendment Act, 2020, takes effect.
 - (d) The Minister or the Regulatory Board may request an amendment to the regulatory strategy published in terms of paragraph (c) or a new regulatory strategy be determined in accordance with paragraph (c).

KEY ISSUE 1 – GOVERNANCE MATTERS (Sec 20 in Cl 5 of Bill) p56 of comment matrix

- Number of meetings of committees
 - **Stakeholder comment:** keep number of meetings at minimum of four per year
 - **Response:** supported

KEY ISSUE 2 - DISCIPLINARY COMMITTEE & PANELS

(Sec 24A in Cl 7 of Bill) p57 of comment matrix

- Composition of committee and panel
 - **Stakeholder comment:**
 - Clarity regarding composition of disciplinary committee in addition to auditors and legally qualified persons
 - Number of panel members to be at least three
 - **Response**
 - Proposal to clarify that other one-third of disciplinary committee to be other suitably qualified persons of disciplinary committee
 - Proposal for minimum of three panel members supported

KEY ISSUE 2 - DISCIPLINARY COMMITTEE & PANELS

(Sec 24A in Cl 7 of Bill) p57 of comment matrix

- Chairperson of committee and panel
 - **Stakeholder comment:**
 - Seniority of chairperson of disciplinary committee
 - Chairperson of disciplinary panel to be retired judge or senior legal person with more than 20 years' experience
 - **Response:**
 - Propose that disciplinary committee be chaired by retired judge or senior counsel
 - Propose that chairperson of disciplinary panel be its legally qualified member

KEY ISSUE 3 - REFERRAL OF NON-AUDIT MATTERS TO PROFESSIONAL BODIES (Sec 48 in Cl 10 of Bill) p82 of comment matrix

- **Stakeholder comment:** require clarity regarding referral of non-audit matters to professional bodies
- **Response:**
 - No need to define non-audit since 'audit' is defined in section 1 of Act
- **Proposed amendment:**
 - Amendment for details of referral of non-audit matters to be dealt with in IRBA's rules and that referral must fall within constitution and rules of professional body

KEY ISSUE 4 - SEARCH & SEIZURE POWERS (Sec 48A & B in Cl 11 of Bill) p94 of comment matrix

- **Stakeholder comment:**
 - Constitutional concerns regarding search and seizure
- **Response:**
 - Submit that provisions are constitutionally sound
 - However, stakeholders identified areas for refinement some of which have been included in proposed amendments, e.g.
 - qualification and certificate for person authorised to conduct search & seizure
 - enhanced protection (non use of answers in criminal proceedings)
 - clarity on criteria for warrant

KEY ISSUE 5 - RECONSIDERATION OF DISCIPLINARY DECISIONS

- **Stakeholder comment:** provide for right to either internal or external appeal against disciplinary decisions
- **Response:**
 - Although Bill does not provide for *internal appeal*, or *appeal* to courts, against decisions, right to take these decisions to court for review remains available
 - Grounds for *review* by court in terms of Promotion of Administrative Justice Act, 2000 (“PAJA”) are sufficiently extensive to offer protection to persons affected by such decisions, e.g. bias, procedurally unfair, materially influenced by error of law, ulterior purpose, irrelevant considerations, bad faith, arbitrary or capricious, action not rationally connected to purpose or information before decision-maker, action otherwise unconstitutional or unlawful

KEY ISSUE 6 – SANCTIONS (Sec 51 & 51B in Cl 12 & 14 of Bill) p124 of comment matrix

- **Stakeholder comment:**
 - Determination of maximum fine by Minister in Act
 - Inclusion of factors to be considered before imposing sanctions
- **Response:**
 - To allow for flexibility it is not desirable to determine amount in Act.
 - However, it is proposed that Minister determines maximum fine on recommendation of Board and also publish proposed maximum fine for public comment
 - Mitigating factors may be submitted for consideration in determining sanction

KEY ISSUE 7 – PROTECTION AND DISCLOSURE OF INFORMATION (Sec 57A & B in Cl 16 of Bill) p147 of comment matrix

- **Stakeholder comment:**

- Provide for disclosure of information if in public interest to combat unlawful or unethical conduct
- Ensure appropriate protection of personal information
- Allow for sharing of information with professional bodies in respect of referral of non-audit matters

- **Response:**

- IRBA publishes names of found guilty of improper conduct if entity audited was public interest entity and/or if respondent is repeat offender – refer to IRBA Policy on Sanctions (Dec 2016)
- IRBA is bound by Protection of Personal Information Act and has to implement Act. This requirement is reiterated in proposed section 57A
- Proposal is made for sharing of information with professional bodies in respect of referral of non-audit matters

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