

REPUBLIC OF SOUTH AFRICA

AUDITING PROFESSION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 38119 of 24 October 2014)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 15—2014]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Auditing Profession Act, 2005, so as to provide for the regulation of candidate auditors and to update references to the Companies Act, 2008; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

1. Section 1 of the Auditing Profession Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of “auditing pronouncements” of the following definition:
- “**‘candidate auditor’** means an individual who has obtained a professional accountant designation from an accredited professional body and who is serving under the supervision of a registered auditor;”;
- (b) by the substitution for the definition of “company” of the following definition:
- “**‘company’** has the meaning assigned to it in the Companies Act, 2008 (Act No. 71 of 2008);”;
- (c) by the substitution for the definition of “professional body” of the following definition:
- “**‘professional body’** means a body of, or representing[,]—
- (a) registered auditors and candidate auditors; or [both]
- (b) accountants, [and] registered auditors and candidate auditors;”.

2. The following section is hereby substituted for section 6 of the principal Act:

**“Functions with regard to registration of auditors and candidate
auditors**

6. [(1)] The Regulatory Board must, subject to this Act—
- (a) prescribe minimum qualifications, competency standards and requirements for registration of auditors and candidate auditors in addition to those provided for in this Act;

- (b) consider and decide on any applications for registration of auditors and candidate auditors;
- (c) prescribe the period of validity of the registration of a registered auditor and a candidate auditor;
- (d) keep **[a register]** registers of registered auditors and registered candidate auditors and decide on—
 - (i) the **[register]** registers to be kept;
 - (ii) the maintenance of the **[register]** registers; and
 - (iii) the reviewing of the **[register]** registers and the manner in which alterations thereto may be effected;
- (e) ensure that the **[register]** registers of registered auditors and registered candidate auditors **[is]** are at all reasonable times open to inspection by any member of the public;
- (f) terminate the registration of registered auditors and registered candidate auditors in accordance with this Act; and
- (g) prescribe minimum requirements for the renewal of registration and re-registration of registered auditors and registered candidate auditors.”.

Amendment of section 21 of Act 26 of 2005

3. Section 21 of the principal Act is hereby amended by the insertion in paragraph (a) of subsection (2) after the expression “registered auditors” of the expression “and candidate auditors”.

Substitution of section 36 of Act 26 of 2005

4. The following section is hereby substituted for section 36 of the principal Act:

“Effect of termination of accreditation on registered auditors and candidate auditors

36. (1) The fact that the accreditation of a professional body has ended in terms of section 35 does not affect the registration under this Act of any registered auditor or candidate auditor who was a member of the professional body at the time of the termination.

(2) Registered auditors or candidate auditors referred to in subsection (1) who were members of the professional body referred to in subsection (1) must, within six months of the termination of the accreditation of the professional body or within such other period as may be prescribed by the Regulatory Board, provide written proof to the satisfaction of the Regulatory Board that they—

- (a) have become members of another accredited professional body; or
- (b) have made arrangements for their continuing professional development as recognised or prescribed by the Regulatory Board.

(3) Where a registered auditor or candidate auditor referred to in subsection (1) fails to comply with the requirements of subsection (2), the Regulatory Board, subject to subsection (4), may cancel the registration of the registered auditor or candidate auditor under this Act.

(4) The Regulatory Board must, prior to the cancelling of the registration of a registered auditor or candidate auditor, give notice in writing to the registered auditor concerned of its intention to cancel and the reasons on which it is based, and must afford the registered auditor or candidate auditor a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding to cancellation.”.

Substitution of section 37 of Act 26 of 2005

5. The following section is hereby substituted for section 37 of the principal Act:

“Registration of individuals as registered auditors and candidate auditors

37. (1) An individual must apply on the prescribed application form to the Regulatory Board for registration as an auditor or a candidate auditor. 5

(2) If, after considering an application, the Regulatory Board is satisfied that the applicant—

- (a) has complied with the prescribed education, training and competency requirements for a registered auditor or candidate auditor; 10
- (b) has arranged for his or her continuing professional development if the applicant is not a member of an accredited professional body;
- (c) is resident within the Republic;
- (d) is a fit and proper person to practise the profession;
- (e) has met any additional requirements for registration as prescribed under section 6, 15

the Regulatory Board must, subject to subsections (3) and (5), register the applicant, enter the applicant’s name in the applicable register and issue to the applicant a certificate of registration on payment of the prescribed fee.

(3) The Regulatory Board may not register an individual as a registered auditor or candidate auditor if that individual— 20

- (a) has at any time been removed from an office of trust because of misconduct related to a discharge of that office;
- (b) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery, uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty, other than theft, fraud or forgery, committed prior to 27 April 1994 associated with political objectives, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding such an amount as may be prescribed by the Minister; 25 30
- (c) is for the time being declared by a competent court to be of unsound mind or unable to manage his or her own affairs; or
- (d) is disqualified from registration under a sanction imposed under this Act. 35

(4) For the purposes of subsection (3)(b), the Regulatory Board must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.

(5) The Regulatory Board may decline to register as a registered auditor or candidate auditor an individual who is an unrehabilitated insolvent, has entered into a compromise with creditors, has applied for debt review or has been provisionally sequestrated.”. 40

Amendment of section 38 of Act 26 of 2005

6. Section 38 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 45

“(a) the company **[is incorporated and registered as a company under the Companies Act, 1973 (Act No. 61 of 1973), with]** has a share capital and its memorandum of **[association]** incorporation provides that its directors and past directors shall be liable jointly and severally, together with the company, for its debts and liabilities contracted during their periods of office;” 50

- (b) by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(d) the **[articles of association]** memorandum of incorporation of the company provides that— 55

- (i) the company may, without confirmation by a court, purchase on such terms as it may consider expedient any shares held in

- it and the shares purchased are available for allotment in accordance with the company's **[articles of association memorandum of incorporation]**; and
- (ii) despite any provision to the contrary in any other law, a member of the company may not appoint a person who is not a member of the company to attend, speak or vote on behalf of the member at any meeting of the company.”; and
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) In its application to a company which is a registered auditor, section **[20] 8(2)(c)** of the Companies Act, **[1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008)**, has effect **[with the exception of subsection (1)(b)]**.”.

Amendment of section 39 of Act 26 of 2005

7. The following section is hereby substituted for section 39 of the principal Act:

“Termination of registration of registered auditors and candidate auditors

- 39.** (1) Subject to subsection (3), the Regulatory Board must cancel the registration of any registered auditor that is an individual or candidate auditor, and—
- (a) who subsequent to registration becomes subject to any of the disqualifications mentioned in section 37(3);
- (b) whose registration was made in error or on information subsequently proved to be false; or
- (c) who prior to registration has been guilty of improper conduct because of which the registered auditor or candidate auditor is, in the opinion of the Regulatory Board not a fit and proper person to be registered.
- (2) Subject to subsection (3), the Regulatory Board may cancel the registration of any registered auditor that is an individual or candidate auditor, and—
- (a) whose estate is sequestered or provisionally sequestered or who enters into a compromise with creditors or who has applied for debt review; or
- (b) who ceases to be a member of an accredited professional body and does not within six months of such cessation provide written proof to the satisfaction of the Regulatory Board that such registered auditor or candidate auditor has made arrangements for his or her continuing professional development.
- (3) Prior to cancelling a registration, the Regulatory Board must give notice in writing to the registered auditor or candidate auditor concerned of its intention to cancel and the reasons on which it is based, and afford the registered auditor or candidate auditor a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with cancellation.
- (4) The registration of a registered auditor that is a partnership, sole proprietor or company automatically lapses if it no longer complies with section 38(1).
- (5) The registration of a registered auditor or candidate auditor automatically lapses if such registered auditor or candidate auditor fails to pay a prescribed fee or portion thereof within the period prescribed by the Regulatory Board.
- (6) At the written request of a registered auditor or candidate auditor, the Regulatory Board must remove the name of the registered [auditor’s name] auditor or candidate auditor from the applicable register, but the removal does not affect any liability incurred by the registered auditor or candidate auditor prior to the date of the removal.
- (7) The fact that the registration of a registered **[auditor’s registration]** auditor or candidate auditor has been cancelled or removed does not prevent the Regulatory Board from instituting disciplinary proceedings for conduct committed prior to the cancellation or removal.

(8) As soon as practicable after the registration of a registered **[auditor's registration]** auditor or candidate auditor has been cancelled or removed the Regulatory Board must publish a notice of the cancellation or removal, specifying the name of the registered [auditor's name] auditor or candidate auditor.”.

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Amendment of section 40 of Act 26 of 2005

8. Section 40 of the principal Act is hereby amended by the insertion in subsections (1) and (2) after the expression “registered auditor” of the expression “or candidate auditor”.

Amendment of section 41 of Act 26 of 2005

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9. Section 41 of the principal Act is hereby amended—

(a) by the substitution in subsection (6)(a) for subparagraph (iii) of the following subparagraph:

“(iii) in the case of a company, the present first names, or initials, and surnames of the directors [as required by section 171 of the Companies Act, 1973 (Act No. 61 of 1973)]”; and

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(b) by the deletion of subsection (9).

Amendment of section 42 of Act 26 of 2005

10. Section 42 of the principal Act is hereby amended by the insertion after the expression “registered auditors” of the expression “or candidate auditors”.

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Amendment of section 47 of Act 26 of 2005

11. Section 47 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) Despite the generality of paragraph (a), the Regulatory Board, or any person authorised by it, must at least every three years inspect or review the practice of a registered auditor that audits a public **[interest]** company as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008).”.

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Insertion of section 51A in Act 26 of 2005

12. The following section is hereby inserted in the principal Act, after section 51:

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“Application of certain provisions to candidate auditors

51A. Sections 48, 49, 50 and 51 apply to candidate auditors with the necessary changes.”.

Amendment of long title of Act 26 of 2005

13. The following long title is hereby substituted for the long title of the principal Act:

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“To provide for the establishment of the Independent Regulatory Board for Auditors; to provide for the education, training and professional development of registered auditors and candidate auditors; to provide for the accreditation of professional bodies; to provide for the registration of auditors and candidate auditors; to regulate the conduct of registered auditors and candidate auditors; to repeal an Act; and to provide for matters connected therewith.”.

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Short title

14. This Act is called the Auditing Profession Amendment Act, 2014.

MEMORANDUM ON THE OBJECTS OF THE AUDITING PROFESSION AMENDMENT BILL, 2014

1. BACKGROUND

- 1.1 The Auditing Profession Act, 2005 (Act No. 26 of 2005) (“the Act”), provides for the regulation of the auditing profession by establishing the Independent Regulatory Board for Auditors (“the IRBA”). The IRBA is responsible for the registration of individuals and firms as auditors for purposes of practicing the auditing profession.
- 1.2 The process for becoming a registered auditor is due to change with the termination of the Public Practice Examination (“the PPE”) in November 2014. From 2014, all first time candidates wishing to write the final assessment for a qualification as a Chartered Accountant (“CA”) will be required to write the Assessment of Professional Competence of the South African Institute of Chartered Accountants. The Assessment of Professional Competence is a general assessment of the competence required of a CA and is not an assessment of audit competence. In order to still assess audit competence before registration as an auditor, the IRBA has replaced the Public Practice Examination with the Audit Development Programme. The Audit Development Programme entails a phase whereby an aspiring auditor becomes a candidate auditor before registration as an auditor.
- 1.3 The Audit Development Programme is a period of specialisation undertaken by professional accountants who want to become registered auditors. The purpose of this programme is to consolidate and refine capabilities that are developed during the training programme. This takes place in a more complex learning environment and the aspiring auditors are required to perform roles more senior to those undertaken in the current training contract.
- 1.4 The Act currently does not regulate candidate auditors and this amendment is necessary so that all aspiring registered auditors are under the jurisdiction of the IRBA. In the past, all candidates who successfully completed the PPE and wanted to become a registered auditor, would register with the IRBA. The new model provides for a period of specialist training prior to a CA becoming a registered auditor. It is during this period of training that the registered candidate auditor will be subject to the regulation of the IRBA as a candidate auditor.
- 1.5 Further, a new Companies Act was enacted in 2008 to replace the Companies Act, 1973 (Act No. 61 of 1973). The Act has not been updated to align it to the Companies Act, 2008 (Act No. 71 of 2008).

2. OBJECTS OF BILL

- 2.1 The principal objects of the Bill are—
 - (a) to provide for the regulation of candidate auditors by the IRBA; and
 - (b) to update references to the Companies Act in the Act.
- 2.2 The main features of the proposed amendments regarding the regulation of candidate auditors are—
 - (a) to define candidate auditors as individuals who have obtained a professional accountant designation from an accredited professional body that has been assigned accreditation;
 - (b) to include candidate auditors in the requirements for registration and to put them under the responsibility of the IRBA in matters of discipline in order to ensure protection of the public in the work they do; and
 - (c) to give registered candidate auditors the opportunity to gain exposure in practise to a broad range of issues faced by registered auditors before the candidate auditors become registered auditors themselves.

- 2.3 The updates which are necessitated by the Companies Act, 2008, relate to the definition of “company” in section 1 of the Act and cross references to the Companies Act, 1973, in sections 38, 41 and 47 of the Act.

3. CONSULTATION

The IRBA was consulted and supported the amendments.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1.1 A Bill must be dealt with (tagged) in accordance with the procedure established by section 75 of the Constitution if it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies. Section 74 deals with Bills amending the Constitution and does not apply to the Bill under discussion. Section 76 deals with ordinary Bills affecting provinces. In terms of section 76(3), a Bill must be dealt with in accordance with section 76(1) or (2) if it falls within a functional area listed in Schedule 4 or provides for legislation envisaged in paragraphs (a) to (f) of section 76(3). In terms of section 76(4) of the Constitution, a Bill must be dealt with in accordance with the procedure established by section 76(1) if it provides for legislation envisaged in paragraph (a) or (b) of section 76(4).
- 5.1.2 Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a) to (f) and second, whether the provisions of the Bill in substantial measure fall within a concurrent provincial legislative competence. Tagging focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect the functional areas listed in Schedule 4 and not whether or not any of its provisions are incidental to its substance.
- 5.1.3 The Act regulates the auditing profession. The Bill seeks to amend the Act in order to also regulate candidate auditors. Section 22 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), provides that every citizen has the right to choose their trade, occupation or profession freely, but at the same time empowers the State to regulate by law the practice of a trade, occupation or profession. Neither Schedule 4 to the Constitution nor Schedule 5 to the Constitution (Functional areas of exclusive provincial legislative competence) refers to matters envisaged in section 22 of the Constitution. Furthermore, although the profession renders a service to the public, the provisions of the Bill do not fall within the functional area of consumer protection as listed in Part A of Schedule 4 to the Constitution. The provisions of the Bill deal with the regulation of the profession. The other amendments that the Bill seeks to effect are technical amendments in order to bring the Act in line with the new Companies Act.
- 5.1.4 None of the provisions of the Bill provide for legislative matters listed in section 76(3)(a) to (f) and none of the provisions fall within a functional area listed in Schedule 4 to the Constitution. It can therefore not be said that the provisions of the Bill substantially affect the functional areas listed in that Schedule. The provisions of the Bill also do not provide for legislation envisaged in section 76(4)(a) or (b) of the Constitution or for a matter falling within a functional area listed in Schedule 5 to the Constitution.
- 5.1.5 The National Treasury and the State Law Advisers are therefore of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.