

REPUBLIC OF SOUTH AFRICA

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# AUDITING PROFESSION BILL

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*(As introduced in the National Assembly as a section 75 Bill;  
Bill published in Government Gazette No. 27981 of 30 August 2005)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

[B 31—2005]

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# BILL

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

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER I

### INTERPRETATION AND OBJECTS OF ACT

#### Definitions

1. In this Act, unless the context indicates otherwise—
  - “**appropriate regulator**”, in relation to any entity, means any national government department, registrar, regulator, agency, authority, centre, board or similar institution established, appointed, required or tasked in terms of any law to regulate, oversee or ensure compliance with any legislation, regulation or licence, rule, directive, notice or similar instrument issued in terms of or in compliance with any legislation or regulation, as appears to the Regulatory Board to be appropriate in relation to the entity;
  - “**audit**” means the examination of—
    - (a) financial statements with the objective of expressing an opinion with a high level of assurance as to their fairness and as to their compliance with an identified financial reporting framework and any applicable statutory requirements; or
    - (b) financial and other information, prepared in accordance with identified suitable criteria, with the objective of expressing an opinion with a high or moderate level of assurance on the financial and other information, and “auditing service” has a similar meaning;

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**“auditing pronouncements”** means those standards, practice statements, guidelines and circulars developed, adopted, issued or prescribed by the Regulatory Board which a registered auditor must comply with in the performance of auditing services;

**“Auditor-General”** has the meaning assigned in section 1 of the Public Audit Act, 2004 (Act No. 25 of 2004); 5

**“client”** means the person for whom a registered auditor is performing or has performed audit services;

**“company”** has the meaning assigned to it in the Companies Act, 1973 (Act No. 61 of 1973); 10

**“delegation”**, in relation to a duty, includes an instruction or request to perform or to assist in performing the duty;

**“ensure”** means to take all reasonably necessary and expedient steps in order to achieve the purpose, objective or intention of this Act or a provision of this Act;

**“firm”** means a partnership, company or sole proprietor referred to in section 40; 15

**“improper conduct”** means any intentional or negligent non-compliance with this Act or any rules prescribed in terms of this Act or any conduct prescribed as constituting improper conduct;

**“management board”**, in relation to an entity which is a company, means the board of directors of the company and, in relation to any other entity, means the body or individual having control of the management of the business of the entity; 20

**“Minister”** means the Minister of Finance;

**“nominated registered auditor”** means the individual who is appointed by an entity to perform the relevant auditing services, whether by virtue of being personally appointed as registered auditor or by virtue of being a member of a firm which is so appointed; 25

**“organ of state”** has the meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;

**“prescribe”** means prescribe by notice in the *Gazette*, and “prescribed” and “prescribing” have corresponding meanings; 30

**“professional body”** means a body of, or representing, registered auditors or both accountants and registered auditors;

**“public accountant”** means any person who is engaged in public practice;

**“public practice”** means the practice of a registered auditor who places professional services at the disposal of the public for reward, and “practice” has a similar meaning; 35

**“Public Accountants’ and Auditors’ Board”** means the board established under the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991);

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 40

**“publish”** means to publish in the *Gazette* or in any official publication or official website of the Regulatory Board dealing with the auditing profession and distributed or circulated on a national basis to members of that profession, and “publishing” and “published” have corresponding meanings;

**“registered auditor”** means an individual or firm registered as an auditor with the Regulatory Board; 45

**“Regulatory Board”** means the Independent Regulatory Board for Auditors established by section 3;

**“reportable irregularity”** means any unlawful act or omission committed by any person in the conduct of the management or control of an entity, which— 50

(a) has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or client of the entity; or

(b) is fraudulent or amounts to theft or is otherwise dishonest; or

(c) represents a material breach of any fiduciary duty owed by such person to the entity or any partner, member, shareholder, creditor or client of the entity 55

under any law applying to the entity or the conduct or management thereof;

**“rule”** means a rule prescribed by the Regulatory Board under section 10;

**“third party”** means any person other than a client; and

**“training contract”** means a written training contract entered into in the prescribed form and registered with the Regulatory Board whereby a prospective registered auditor is duly bound to serve a registered auditor for a specified period and is entitled to receive training in the practice and profession of a registered auditor. 60

## Objects of Act

2. The objects of this Act are—
- (a) to protect the public in the Republic by regulating auditing services rendered by registered auditors;
  - (b) to provide for the establishment of an Independent Regulatory Board for Auditors; 5
  - (c) to improve the development and maintenance of internationally comparable ethical standards and auditing standards for auditors that promote investment and employment in the Republic;
  - (d) to set out measures to advance the implementation of appropriate standards of qualification and competence and good ethics in the auditing profession; and 10
  - (e) to provide for procedures for disciplinary action in respect of improper conduct.

## CHAPTER II

### INDEPENDENT REGULATORY BOARD FOR AUDITORS 15

#### *Part 1*

#### *Establishment and legal status of Regulatory Board*

#### Establishment and legal status

3. (1) The Independent Regulatory Board for Auditors is hereby established, and—
- (a) is a juristic person; and 20
  - (b) must exercise its functions in accordance with this Act and any other relevant law.
- (2) The Regulatory Board is subject to—
- (a) the Constitution and the law; and
  - (b) any directive issued by the Minister in terms of section 30. 25

#### *Part 2*

#### *Functions of Regulatory Board*

#### General functions

4. The Regulatory Board must, in addition to its other functions provided for in this Act— 30
- (a) take steps to promote the integrity of the auditing profession, including—
    - (i) investigating alleged improper conduct;
    - (ii) conducting disciplinary hearings; and
    - (iii) imposing sanctions for improper conduct;
  - (b) take steps it considers necessary to protect the public in their dealings with registered auditors; 35
  - (c) prescribe standards of professional qualifications, competence, ethics and conduct of registered auditors;
  - (d) participate in the activities of international bodies whose main purpose is to develop and set auditing standards and to promote the auditing profession; 40
  - (e) publish a journal or any other publication, and issue newsletters and circulars containing information and guidelines relating to the auditing profession;
  - (f) encourage education in connection with, and research into, any matter affecting the auditing profession; and
  - (g) take any measures it considers necessary for the proper performance and exercise of its functions or duties or to achieve the objects of this Act. 45

#### Functions with regard to accreditation of professional bodies

5. The Regulatory Board must, subject to this Act—
- (a) prescribe minimum requirements for accreditation of professional bodies in addition to those provided for in this Act; 50

- (b) consider and decide on any application for accreditation;
- (c) prescribe the period of validity of the accreditation;
- (d) keep a register of accredited professional bodies and decide on—
  - (i) the register to be kept;
  - (ii) the maintenance of the register; and
  - (iii) the reviewing of the register and the manner in which alterations thereto may be effected; and
- (e) terminate the accreditation of professional bodies in accordance with this Act.

#### **Functions with regard to registration of auditors**

- 6. (1) The Regulatory Board must, subject to this Act—
  - (a) prescribe minimum qualifications, competency standards and requirements for registration of auditors in addition to those provided for in this Act;
  - (b) consider and decide on any application for registration of auditors;
  - (c) prescribe the period of validity of the registration of a registered auditor;
  - (d) keep a register of registered auditors and decide on—
    - (i) the register to be kept;
    - (ii) the maintenance of the register; and
    - (iii) the reviewing of the register and the manner in which alterations thereto may be effected;
  - (e) ensure that the register of registered auditors is at all reasonable times open to inspection by any member of the public; and
  - (f) terminate the registration of registered auditors in accordance with this Act.

#### **Functions with regard to education, training and professional development**

- 7. (1) The Regulatory Board must—
  - (a) either conditionally or unconditionally, recognise or withdraw the recognition of educational institutions and their educational qualifications or programmes or continued education, training and professional development programmes in the auditing profession;
  - (b) recognise or withdraw the recognition of any accredited professional body to conduct any qualifying examination contemplated in section 37 or conduct any such examination for the purposes of section 37;
  - (c) prescribe requirements for and conditions relating to and the nature and extent of continued education, training and professional development;
  - (d) prescribe training requirements, including, but not limited to, the period of training and the form for training contracts;
  - (e) approve and register training contracts entered into by prospective registered auditors;
  - (f) prescribe competency requirements;
  - (g) either conditionally or unconditionally, recognise or withdraw the recognition of registered auditors as training officers;
  - (h) establish mechanisms for registered auditors to gain recognition of their qualifications and professional status in other countries;
  - (i) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act; and
  - (j) give advice to, render assistance to, consult with or interact with any organ of state, statutory body, educational institution, professional body or examining body with regard to educational facilities for and the education, training and professional development of registered auditors and prospective registered auditors.
- (2) The Regulatory Board may establish and administer an education fund for the purpose of education, training, professional development and continued education, training and professional development of registered auditors and students in the auditing profession.

### Functions with regard to fees and charges

8. (1) The Regulatory Board must prescribe—
- (a) accreditation and registration fees;
  - (b) annual fees, or a portion thereof in respect of a part of a year;
  - (c) the date on which any fee is payable; 5
  - (d) the fees payable in respect of any examination referred to in section 37, conducted by an accredited professional body or the Regulatory Board;
  - (e) any fees payable for the purposes of the education fund referred to in section 7(2);
  - (f) fees payable for an inspection or review undertaken by the Regulatory Board in terms of section 47; or 10
  - (g) fees payable for any other service rendered by the Regulatory Board.
- (2) The Regulatory Board may grant exemption from payment of any fees referred to in subsection (1).

### Part 3

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#### *Powers of Regulatory Board*

#### General powers

9. The Regulatory Board may—
- (a) determine its own staff establishment and may appoint a chief executive officer and employees in posts on the staff establishment on such conditions, including the payment of remuneration and allowances, as it may determine; 20
  - (b) determine the expenses reimbursable to its members or the members of any committee of the Regulatory Board;
  - (c) collect fees and invest funds;
  - (d) borrow or raise money in accordance with the Public Finance Management Act; 25
  - (e) with a view to the promotion of any matter relating to the auditing profession, grant bursaries or loans to prospective registered auditors;
  - (f) finance any publications;
  - (g) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers; 30
  - (h) decide upon the manner in which agreements must be entered into;
  - (i) obtain the services of any person, including any organ of state or institution, to perform any specific act or function; 35
  - (j) determine where its head office must be situated;
  - (k) confer with any organ of state;
  - (l) open and operate its own bank accounts;
  - (m) ensure that adequate risk management and internal control practices are in place; 40
  - (n) perform legal acts, or institute or defend any legal action in its own name; and
  - (o) do anything that is incidental to the exercise of any of its functions or powers.

#### Powers to make rules

10. (1) The Regulatory Board may, by notice in the *Gazette*, prescribe rules with regard to— 45
- (a) any matter that is required or permitted to be prescribed in terms of this Act; and
  - (b) any other matter for the better execution of this Act or a function or power provided for in this Act.
- (2) (a) Before the Regulatory Board prescribes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on the public to comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice. 50
- (b) If the Regulatory Board alters a draft rule because of any comment, it need not publish the alteration before prescribing the rule. 55



(3) The Regulatory Board may, if circumstances necessitate the immediate publication of a rule, publish that rule without the consultation contemplated in subsection (2).

#### **Part 4**

### **Governance of Regulatory Board**

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#### **Appointment of members of Regulatory Board**

**11.** (1) The Regulatory Board consists of not more than 10 non-executive members appointed by the Minister.

(2) The Minister must appoint persons with suitable qualifications to effectively manage and guide the activities of the Regulatory Board, based on their knowledge and experience. 10

(3) When making the appointments, the Minister must take into consideration, amongst other factors—

(a) the need for transparency and representivity within the broader demographics of the South African population; 15

(b) any nominations received in terms of subsection (5); and

(c) the availability of persons to serve as members of the Regulatory Board.

(4) Disregarding any vacancy in its membership, not more than 40% of the members of the Regulatory Board may be registered auditors.

(5) Before the Minister makes the appointments, the Regulatory Board must, by notice in the *Gazette* and in any national newspaper, invite nominations from members of the public. 20

(6) The Minister may appoint an alternate member for every member of the Regulatory Board, and an alternate member may attend and take part in the proceedings at any meeting of the Regulatory Board whenever the member for whom he or she has been appointed as an alternate is absent from that meeting. 25

(7) The Regulatory Board, as soon as practicable after the appointment of its members, must publish by notice in the *Gazette*—

(a) the name of every person appointed;

(b) the date from which the appointment takes effect; and 30

(c) the period for which the appointment is made.

#### **Term of office of members of Regulatory Board**

**12.** (1) A member of the Regulatory Board appointed in terms of section 11 holds office for such period, but not exceeding two years, as the Minister may determine at the time of his or her appointment. 35

(2) A member of the Regulatory Board may be reappointed, but, subject to subsection (3), may not serve more than two consecutive terms of office.

(3) Despite subsections (1) and (2), the Minister may, by notice in the *Gazette* and after consultation with the Regulatory Board, extend the period of office of all the members of the Regulatory Board for a maximum period of 12 months. 40

(4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the Regulatory Board, terminate the period of office of a member of the Regulatory Board—

(a) if the performance of the member is unsatisfactory;

(b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively; or 45

(c) if the member, whilst holding office, has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.

(5) Despite subsection (1), the Minister may, if the performance of the Regulatory Board is unsatisfactory, terminate the period of office of all the members of the Regulatory Board. 50

#### **Disqualification from membership and vacation of office**

**13.** (1) A person may not be appointed as a member of the Regulatory Board if that person— 55

- (a) is not a South African citizen and is not ordinarily resident in the Republic;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine or, in the case of fraud, to a fine or imprisonment or both; 5
  - (d) subject to subsection (2), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine or, in the case of fraud, to a fine or imprisonment or both;
  - (e) has, as a result of improper conduct, been removed from an office of trust; or 10
  - (f) has in terms of this Act been found guilty of improper conduct.
- (2) For the purposes of subsection (1)(d), the Minister must, as far as reasonably possible, take cognisance of the prevailing circumstances in a foreign country relating to a conviction.
- (3) The membership of a member of the Regulatory Board ceases if he or she— 15
- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the Regulatory Board;
  - (b) resigns by written notice addressed to the Regulatory Board;
  - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973); 20
  - (d) has, without the leave of the Regulatory Board, been absent from more than two consecutive meetings of the Regulatory Board; or
  - (e) ceases to be permanently resident in the Republic.
- (4) If a member of the Regulatory Board becomes disqualified on a ground mentioned in subsection (1) or (3), such member ceases to be a member of the Regulatory Board from the date of becoming disqualified. 25
- (5) (a) If a member of the Regulatory Board dies or vacates his or her office before the expiration of his or her term of office, the Minister may appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
- (b) If the Minister appoints a person to fill the vacant seat, the appointment must be made within 60 days from the date on which the vacancy occurred. 30

### **Chairperson and deputy chairperson**

- 14.** (1) (a) The Regulatory Board must elect a chairperson and a deputy chairperson from among its members.
- (b) The chairperson and deputy chairperson each hold office for a period of two years from the date of their appointment. 35
- (2) If the chairperson is absent or for any reason unable to perform his or her functions as chairperson, the deputy chairperson must act as chairperson, and while he or she so acts he or she has all the powers and must perform all the duties of the chairperson.
- (3) If both the chairperson and deputy chairperson are absent or for any reason unable to preside at a Regulatory Board meeting, the members present must elect another member to act as chairperson at that meeting. 40

### **Meetings**

- 15.** (1) The Regulatory Board meets as often as circumstances require, but at least twice every year, at such time and place as the Regulatory Board may determine. 45
- (2) The chairperson may at any time convene a special meeting of the Regulatory Board at a time and place determined by the chairperson.
- (3) Upon a written request signed by not less than three members of the Regulatory Board, the chairperson must convene a special meeting of the Regulatory Board to be held within three weeks after the receipt of the request, and the meeting must take place at a time and place determined by the chairperson. 50
- (4) A majority of the members of the Regulatory Board constitutes a quorum at a meeting.
- (5) (a) Every member of the Regulatory Board, including the chairperson, has one vote. 55
- (b) In the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

## Decisions

- 16.** (1) A decision of the majority of members present at a duly constituted meeting is a decision of the Regulatory Board.
- (2) No decision taken by or act performed under the authority of the Regulatory Board is invalid only by reason of— 5
- (a) a casual vacancy on the Regulatory Board; or
  - (b) the fact that any person who was not entitled to sit as a member of the Regulatory Board participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present and acted at the time followed the required procedure for decisions. 10

## Duties of members

- 17.** The members of the Regulatory Board form the accounting authority of the Regulatory Board within the meaning of the Public Finance Management Act and must, in addition to the duties and responsibilities provided for in the Public Finance Management Act— 15
- (a) provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the Regulatory Board;
  - (b) comply with all applicable legislation and agreements;
  - (c) communicate openly and promptly with the Minister, any ministerial representatives, professional bodies and registered auditors; 20
  - (d) deal with the Minister, any ministerial representatives, professional bodies and registered auditors in good faith; and
  - (e) at all times act in accordance with the code of conduct for members of the Regulatory Board as may be prescribed by the Minister.

## Chief executive officer 25

- 18.** (1) The chief executive officer is responsible for the day-to-day management of the Regulatory Board and is accountable to the Regulatory Board.
- (2) The chief executive officer must enter into a performance agreement with the Regulatory Board on acceptance of his or her appointment.

## Delegations 30

- 19.** (1) The Regulatory Board may—
- (a) in writing delegate any of its powers to a committee, the chief executive officer or any member of the Regulatory Board or any other person or body of persons established in terms of this Act but may not delegate the power to prescribe rules; and 35
  - (b) assign any employee of the Regulatory Board to perform any of its duties.
- (2) A delegation or assignment in terms of subsection (1)—
- (a) is subject to such limitations and conditions as the Regulatory Board may impose;
  - (b) may authorise subdelegation; and 40
  - (c) does not divest the Regulatory Board of the delegated power or the performance of the assigned duty.
- (3) The Regulatory Board may confirm, vary or revoke any decision taken by a committee, the chief executive officer, a member of the Regulatory Board or an employee as a result of a delegation or assignment in terms of subsection (1). 45

## Part 5

### *Committees of Regulatory Board*

#### Establishment of committees

- 20.** (1) The Regulatory Board, subject to subsection (2), may establish committees to assist it in the performance of its functions and it may at any time dissolve or reconstitute any such committee. 50
- (2) The Regulatory Board must appoint the following permanent committees:

- (a) A committee for auditor ethics in accordance with section 21;
- (b) a committee for auditing standards in accordance with section 22;
- (c) an education, training and professional development committee;
- (d) an investigating committee; and
- (e) a disciplinary committee. 5

(3) (a) A committee consists of as many members as the Regulatory Board considers necessary.

(b) The Regulatory Board, subject to sections 21, 22 and 24 and taking into account, amongst other factors, the need for transparency and representivity within the broader demographics of the South African population, may appoint any person as a member of a committee. 10

(c) If the Regulatory Board does not designate a chairperson for a committee, other than a disciplinary committee, the committee may elect a chairperson from among its members.

(4) The Regulatory Board must provide funding to its committees in such a way that the committees are able to perform their functions effectively. 15

(5) Sections 15 and 16 relating to meetings and decisions of the Regulatory Board, respectively, with the necessary changes apply in respect of any committee, except that the committees must meet at least four times a year.

### **Committee for auditor ethics** 20

**21.** (1) The committee for auditor ethics must consist of the following members appointed by the Regulatory Board, taking into account, amongst other factors, the need for transparency and representivity within the broader demographics of the South African population:

- (a) Three registered auditors; 25
- (b) three persons representing users of audit services;
- (c) one person representing an exchange which is the holder of a stock exchange licence issued under the Securities Services Act, 2004 (Act No. 36 of 2004); and
- (d) one advocate or attorney with at least 10 years' experience in the practice of law. 30

(2) The committee for auditor ethics must assist the Regulatory Board—

- (a) to determine what constitutes improper conduct by registered auditors by developing rules and guidelines for professional ethics, including a code of professional conduct; 35
- (b) to interact on any matter relating to its functions and powers with professional bodies and any other body or organ of state with an interest in the auditing profession; and
- (c) to provide advice to registered auditors on matters of professional ethics and conduct. 40

### **Committee for auditing standards**

**22.** (1) The committee for auditing standards consists of the following members appointed by the Regulatory Board, taking into account, amongst other factors, the principles of transparency and representivity:

- (a) Five registered auditors; 45
- (b) one person with experience of business;
- (c) an incumbent of the office of the Auditor-General, or a person nominated by that incumbent;
- (d) an incumbent of the office of the Executive Officer of the Financial Services Board, or a person nominated by that incumbent; 50
- (e) one person with experience in the teaching of auditing at a university recognised or established under the Higher Education Act, 1997 (Act No. 101 of 1997);
- (f) one person nominated by any stock exchange licensed under the Securities Services Act, 2004 (Act No. 36 of 2004); 55
- (g) the Commissioner of the South African Revenue Services established in terms of the South African Revenue Services Act, 1997 (Act No. 34 of 1997), or a person nominated by the Commissioner; and

- (h) an incumbent of the office of the Registrar of Banks, or a person nominated by that incumbent.
- (2) The committee for auditing standards must assist the Regulatory Board—
  - (a) to develop, maintain, adopt, issue or prescribe auditing pronouncements;
  - (b) to consider relevant international changes by monitoring developments by other auditing standard-setting bodies and sharing information where requested; 5
  - (c) to promote and ensure the relevance of auditing pronouncements by—
    - (i) considering the needs of users of audit reports;
    - (ii) liaising with the other committees of the Regulatory Board on standards to be maintained by registered auditors and by receiving feedback from such committees on areas where auditing pronouncements are needed; 10
    - (iii) ensuring the greatest possible consistency between auditing pronouncements and accepted international pronouncements; and
    - (iv) consulting with professional bodies on the direction and appropriateness of auditing pronouncements; and 15
  - (d) to influence the nature of international auditing pronouncements by—
    - (i) preparing comment on exposure drafts or discussion papers and replies to questionnaires prepared by the International Assurance and Auditing Standards Board or a successor body; and 20
    - (ii) nominating representatives to committees of the International Assurance and Auditing Standards Board or a successor body when requested to do so by the Regulatory Board.

#### **Matters relating to appointment of members to committees for auditor ethics and for auditing standards** 25

23. (1) When the need for an appointment to the committees for auditor ethics or for auditing standards arises and the appointment depends on a nomination referred to in section 22, the committees for auditor ethics or for auditing standards must provide the Regulatory Board with the name of the nominated person, the name of any nominated alternate and any further relevant information, whereupon the Regulatory Board must in writing appoint the nominated persons within three months of receipt of the nominations. 30

(2) Where any person's appointment to the committees for auditor ethics or for auditing standards is dependent on a nomination referred to in section 22, the Regulatory Board may make the duration of the appointment terminable on notice given by the nominating office-holder to the Regulatory Board that the nominated person has left its employment. 35

(3) A member of the committees for auditor ethics or for auditing standards whose term has expired continues to serve until a successor has been appointed.

#### **Disciplinary committee** 40

24. A disciplinary committee—
- (a) must be chaired by a judge or senior advocate;
  - (b) must consist of a majority of non-registered auditors; and
  - (c) may consist of other suitably qualified persons that are not associated with the auditing profession. 45

### **Part 6**

#### ***Funding and financial management of Regulatory Board***

##### **Funding**

25. The Regulatory Board is funded from—
- (a) the collection of prescribed fees; 50
  - (b) all other monies which may accrue to the Regulatory Board from any other legal source, including sanctions imposed by the Regulatory Board; and
  - (c) moneys appropriated for that purpose by Parliament.

### **Annual budget and strategic plan**

26. The annual budget and strategic plan of the Regulatory Board must be submitted to the Minister in terms of the Public Finance Management Act.

### **Financial management, financial statements and annual report**

27. The financial management and the preparation and submission of financial statements and annual reports must be in accordance with the Public Finance Management Act. 5

## ***Part 7***

### ***National government oversight and executive authority***

#### **Executive authority** 10

28. (1) The Minister exercises executive authority over the Regulatory Board and the Regulatory Board is accountable to the Minister.

(2) In exercising executive authority over the Regulatory Board the Minister must, in addition to the matters provided for in the Public Finance Management Act—

- (a) ensure that the Regulatory Board complies with this Act, the Public Finance Management Act and any other applicable legislation; 15
- (b) ensure that the Regulatory Board is managed responsibly and transparently and meets its contractual and other obligations;
- (c) establish and maintain clear channels of communication between him or her and the Regulatory Board; and 20
- (d) monitor and annually review the performance of the Regulatory Board.

#### **Ministerial representatives**

29. (1) The Minister may designate officials of the National Treasury as his or her representatives to the Regulatory Board.

(2) Ministerial representatives designated in terms of subsection (1) represent the Minister as participating observers at meetings of the Regulatory Board. 25

(3) The Minister or his or her designated representative or representatives may at any time call or convene a meeting of the Regulatory Board in order for the Regulatory Board to give account for actions taken by it.

(4) (a) A ministerial representative must represent the Minister faithfully at meetings of and with the Regulatory Board, without consideration of personal interest or gain, and must keep the Minister informed of what transpired at meetings of the Regulatory Board. 30

(b) A ministerial representative must act in accordance with the instructions of the Minister and may be reimbursed for expenses in connection with his or her duties as a ministerial representative, but may not receive any additional compensation or salary for such duties. 35

#### **Investigations and directives**

30. (1) (a) The Minister may issue directives to the Regulatory Board— 40

- (i) to undertake a specific function—
  - (aa) at its own cost; or
  - (bb) against full or partial payment, as directed by the Minister; or
- (ii) to stop or desist from performing a specific function if that function is not in the best interests of the auditing profession.

(b) The Regulatory Board must comply with any directive given by the Minister. 45

(2) The Minister, at any time, may investigate the affairs or financial position of the Regulatory Board and may recover from the Regulatory Board reasonable costs incurred as a result of an investigation.

## Information

31. The Regulatory Board must provide the Minister or his or her ministerial representative with access to any information as may be reasonably requested.

## CHAPTER III

### ACCREDITATION AND REGISTRATION

5

#### *Part 1*

#### *Accreditation of professional bodies*

#### **Application for accreditation**

32. (1) A professional body must apply, on the prescribed application form, to the Regulatory Board for accreditation. 10

(2) If the Regulatory Board is satisfied that the professional body complies with its requirements for accreditation, it must grant the application on payment of the prescribed fee.

#### **Requirements for accreditation**

33. In order to qualify for accreditation, a professional body must demonstrate, to the satisfaction of the Regulatory Board that— 15

- (a) it complies with the prescribed requirements for professional development and achievement of professional competence;
- (b) it has appropriate mechanisms for ensuring that its members participate in continuing professional development as recognised or prescribed by the Regulatory Board; 20
- (c) it has mechanisms to ensure that its members are disciplined where appropriate;
- (d) it is, and is likely to continue to be, financially and operationally viable for the foreseeable future; 25
- (e) it keeps a register of its members in the form prescribed by the Regulatory Board;
- (f) it has in place appropriate programmes and structures to ensure that it is actively endeavouring to achieve the objective of being representative of all sectors of the South African population; and 30
- (g) it meets any other requirement prescribed by the Regulatory Board from time to time.

#### **Retaining accreditation**

34. In order to retain its accreditation, an accredited professional body must at least once a year at a time prescribed by the Regulatory Board, satisfy the Regulatory Board in the prescribed manner that it continues to comply with the requirements for accreditation listed in section 33. 35

#### **Termination of accreditation**

35. (1) The accreditation of a professional body lapses automatically if— 40

- (a) it ceases to exist; or
- (b) it fails to pay any prescribed fee or portion thereof within such period as may be prescribed by the Regulatory Board.

(2) (a) The Regulatory Board, subject to subsection (3), must cancel the accreditation by it of a professional body if that body ceases to comply with any requirement for accreditation. 45

(b) The Regulatory Board must, prior to cancelling of accreditation, give notice in writing to the professional body concerned of its intention to cancel and the reasons on which it is based, and must afford the professional body a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with cancellation. 50

(c) The Regulatory Board, pending the outcome of the process referred to in paragraph (b), may suspend the accreditation of a professional body if it considers it in the best interests of the public or the auditing profession and may make such alternative arrangements to accommodate the needs of the members of such body during the period of suspension as it may consider necessary. 5

(d) If the Regulatory Board considers that cancellation of accreditation would not be in the best interests of the public, the auditing profession or the members of a professional body referred to in subsection (3), it may extend the accreditation of the professional body concerned on such conditions as it considers appropriate.

(3) A professional body may by written notice to the Regulatory Board renounce its accreditation. 10

(4) (a) On the termination of the accreditation of a professional body, the professional body must inform all the registered auditors who were its members at the time of the termination—

- (i) of the termination of its accreditation; and 15
- (ii) of their duty to provide the Regulatory Board with the written proof referred to in section 36(2).

(b) On the termination of the accreditation of a professional body, the Regulatory Board must publish a notice informing all the registered auditors who were members of the professional body at the time of the termination— 20

- (i) of the termination of its accreditation; and
- (ii) of their duty to provide the Regulatory Board with the written proof referred to in section 36.

(5) A professional body which is no longer accredited is not relieved of any outstanding financial obligation towards the Regulatory Board. 25

#### **Effect of termination of accreditation on registered 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 who was a member of the professional body at the time of the termination.

(2) Registered 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— 30

- (a) have become members of another accredited professional body; or 35
- (b) have made arrangements for their continuing professional development.

(3) Where a registered 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 under this Act.

(4) The Regulatory Board must, prior to the cancelling of the registration of a registered 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 a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding to cancellation. 40

#### **Part 2** 45

#### ***Registration of individual auditors and firms***

#### **Application for registration of individuals as registered auditors**

**37.** (1) A person must apply on the prescribed application form to the Regulatory Board for registration.

(2) If, after considering an application, the Regulatory Board is satisfied that the applicant— 50

- (a) has been certified by an accredited professional body as having complied with the prescribed education, training and competency requirements for a registered auditor;
- (b) has served under a registered training contract for the prescribed period; 55
- (c) has passed any qualifying examinations prescribed, recognised or conducted by the Regulatory Board;



- (d) has arranged for his or her continuing professional development if the applicant is not a member of an accredited professional body;
- (e) is a fit and proper person to practise the profession; and
- (f) is competent to practise as a registered auditor if a period of more than five years has elapsed between the date on which the applicant complied with the education, training and professional development requirements for a registered auditor and the date of the application, 5

the Regulatory Board must, subject to subsections (3) and (5), register the applicant, enter the applicant's name in the register and issue to the applicant a certificate of registration on payment of the prescribed fee. 10

(3) The Regulatory Board may not register an individual if that individual—

- (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; 15 20
- (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.

(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. 25

(5) The Regulatory Board may decline to register a person who is an unrehabilitated insolvent, has entered into a compromise with creditors or has been provisionally sequestrated.

### **Termination of registration**

**38.** (1) Subject to subsection (4), the Regulatory Board must cancel the registration of any registered auditor— 30

- (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 is in the opinion of the Regulatory Board not a fit and proper person to be registered. 35

(2) The registration of a registered auditor automatically lapses if such auditor fails to pay a prescribed fee or portion thereof within the period prescribed by the Regulatory Board. 40

(3) Subject to subsection (4), the Regulatory Board may cancel the registration of any registered auditor—

- (a) whose estate is sequestrated or provisionally sequestrated or who enters into a compromise with creditors; 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 auditor has made arrangements for his or her continuing professional development. 45

(4) Prior to cancelling a registration, the Regulatory Board must give notice in writing to the registered auditor concerned of its intention to cancel and the reasons on which it is based, and afford the registered 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. 50

(5) At the written request of a registered auditor, the Regulatory Board must remove the registered auditor's name from the register, but the removal does not affect any liability incurred by the registered auditor prior to the date of the removal. 55

(6) The fact that a registered auditor's registration has been cancelled or removed does not prevent the Regulatory Board from instituting disciplinary proceedings for conduct committed prior to the cancellation or removal.

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

### Renewal of registration

**39.** (1) A registered auditor must, at least three months prior to the prescribed expiry date of his or her registration, apply in the prescribed manner to the Regulatory Board for the renewal of his or her registration. 5

(2) The Regulatory Board may prescribe conditions for the renewal of registration.

### Registration of firms

**40.** (1) The only firms that may become registered auditors are— 10

- (a) partnerships of which all the partners are individuals who are themselves registered auditors;
- (b) sole proprietors; and
- (c) companies which comply with subsection (3).

(2) On application by a firm which is a partnership fulfilling the conditions in subsection (1)(a) or a sole proprietor, on the prescribed application form, the Regulatory Board must register the firm as a registered auditor on payment of the prescribed fee. 15

(3) The Regulatory Board must register a company as a registered auditor if—

- (a) the company is incorporated and registered as a company under the Companies Act, 1973 (Act No. 61 of 1973), with a share capital and its memorandum of association 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; 20

(b) only individuals who are registered auditors are shareholders of the company;

(c) every shareholder of the company is a director thereof, and every director is a shareholder, except that— 25

(i) where a shareholder of the company dies, the estate of the shareholder may continue to hold the relevant shares for a period of six months as from the date of the death or for such longer period as the Regulatory Board may approve; or 30

(ii) where a shareholder of the company ceases to conform to any requirement of paragraph (b), the shareholder may continue to hold the relevant shares for a period of six months as from the date on which the shareholder ceases so to conform or for such longer period as the Regulatory Board may approve, 35

and provided that—

(aa) no voting rights attach to any share contemplated in paragraph (c)(i) and (ii); and

(bb) a shareholder mentioned in that paragraph does not act as a director of the company or receive, directly or indirectly, any director's fees or remuneration or participate in the income of or profits earned by the company in its business; and 40

(d) the articles of association of the company provide that—

(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; and 45

(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. 50

(4) A company, subject to subsection (3)(c), must immediately cease to engage in public practice when it ceases to conform to subsection (3), and the Regulatory Board must cancel the registration of that firm.

(5) In its application to a company which is a registered auditor, section 20 of the Companies Act, 1973 (Act No. 61 of 1973), has effect with the exception of subsection (1)(b). 55

## CHAPTER IV

## CONDUCT BY AND LIABILITY OF REGISTERED AUDITORS

## Practice

41. (1) Only a registered auditor may engage in public practice or hold out as an registered auditor in public practice or use the description “public accountant”, “certified public accountant”, “registered accountant and auditor”, “accountant and auditor in public practice” or any other designation or description likely to create the impression of being a registered auditor in public practice. 5
- (2) (a) A person who is not registered in terms of this Act may not— 10
- (i) perform any auditing services;
  - (ii) pretend to be, or in any manner hold or allow himself or herself to be held out as, a person registered in terms of this Act;
  - (iii) use the name of any registered auditor or any name or title referred to in subsection (1); or
  - (iv) perform any act indicating or calculated to lead persons to believe that he or she is registered in terms of this Act. 15
- (b) Paragraph (a)(i) may not be construed as prohibiting any person from performing audit services identified in terms of this section, if such services are performed in the service of or by order of and under the direction, control, supervision of or in association with a registered auditor entitled to perform the auditing services identified and who must assume responsibility for any auditing services so performed. 20
- (3) Nothing in this section prohibits—
- (a) any person employed exclusively at a salary by an entity and not carrying on business on his or her own account from using the description “internal auditor” or “accountant” in relation to that entity; 25
  - (b) any member of a not-for-profit club, institution or association from acting as auditor for that club, institution or association if he or she receives no fee or other consideration for such auditing services; or
  - (c) the Auditor-General from appointing any person who is not a registered auditor to carry out on his or her behalf any auditing services which he or she is in terms of the Public Audit Act, 2004 (Act No. 25 of 2004), required to undertake. 30
- (4) Except with the consent of the Regulatory Board, a registered auditor may not knowingly employ in connection with the public practice of the registered auditor—
- (a) any person who is for the time being suspended from public practice under any provision of this Act; or 35
  - (b) any person who is no longer registered as a registered auditor as a result of the name of the person having been removed from the register or being disqualified from registration by virtue of a finding of misconduct and sanction imposed on the person under section 51; or 40
  - (c) any person who applied for registration under section 37, but whose application the Regulatory Board declined.
- (5) A registered auditor who is not in public practice as an individual practitioner may practise as a member of a firm only if, by virtue of section 40, the firm is itself a registered auditor. 45
- (6) A registered auditor may not—
- (a) practise under a firm name or title unless on every letterhead bearing the firm name or title there appears— 50
    - (i) the registered auditor’s present first names, or initials, and surname; or
    - (ii) in the case of a partnership, at least the present first names, or initials, and surnames of the managing partners or, if there are no managing partners, of the active partners or, where such a letterhead is used only by a branch office of the partnership, at least the present first names, or initials, and surnames of the managing partners at that branch office or, if there are no such resident partners, of the partners assigned to that branch office; or 55
  - (iii) in the case of a company, the names of the directors as required by section 171 of the Companies Act, 1973 (Act No. 61 of 1973);

- (b) sign any account, statement, report or other document which purports to represent auditing services performed by the registered auditor, unless the auditing services were performed by the registered auditor, under the personal supervision or direction of the registered auditor or by or under the personal supervision or directions of one or more of the partners, co-directors or co-members of the registered auditor, as the case may be; 5
  - (c) perform professional auditing services unless adequate risk management practices and procedures are in place; or
  - (d) engage in public practice during any period in respect of which the registered auditor has been suspended from public practice. 10
- (7) The provisions of subsection (6)(b) do not apply in respect of auditing services—
- (a) performed on behalf of a registered auditor by another registered auditor; or
  - (b) performed by another registered auditor in a partially completed assignment which the previous registered auditor was unable to complete as a result of death, disability or other fortuitous cause not under the control of the previous registered auditor, and which assignment the successor registered auditor is engaged to complete; or 15
  - (c) performed outside the Republic by a member of a professional body of registered auditors outside the Republic whose status, in the opinion of the Regulatory Board, is at least equal to that demanded by the Regulatory Board for the profession in the Republic. 20
- (8) Nothing in subsection (6)(b) prevents any registered auditor from signing the firm name or title under which the registered auditor practises.
- (9) For the purposes of section 171 of the Companies Act, 1973 (Act No. 61 of 1973), in relation to such a company as is described in section 40, it must be regarded as sufficient if a catalogue, circular or letter to which the said section 171 applies and which emanates from a branch office of any company contains the required particulars in respect of directors attached to that branch office. 25
- (10) In order to engage in public practice, a registered auditor must have paid all applicable prescribed fees. 30

### **Compliance with rules**

42. All registered auditors must comply with rules prescribed by the Regulatory Board.

### **Information to be furnished**

43. (1) Every firm that is a registered auditor must notify the Regulatory Board of any change in its name, composition or address not later than 30 days after the date on which the change takes place. 35
- (2) Within 14 days of the receipt of a written request from any client for whom a registered auditor acts as auditor or person who proposes to appoint the registered auditor as its auditor, the registered auditor must furnish the following information: 40
- (a) Every firm's name or title under which the registered auditor or the registered firm practises;
  - (b) the place or places of business of all firms in which the registered auditor is in public practice as a partner, director or member;
  - (c) the full names of all (if any) of the registered auditor's partners, co-directors or co-members; and 45
  - (d) the registered auditor's first names or initials, surname, ordinary business address and ordinary residential address.
- (3) In subsection (2) the auditor's firm means the partnership or company of which the registered auditor is a partner or member and where, under that subsection, a registered auditor is required to supply information relating to a firm, the supply of the information in the name of the firm must be a sufficient compliance with the obligation of the individual registered auditor. 50

### **General obligation in relation to audit services**

44. (1) The registered auditor may not, without such qualifications as may be appropriate in the circumstances, express an opinion to the effect that any financial statement, including any annexure thereto, which relates to the entity fairly represents in 55

all material respects the financial position of the entity and the results of its operations and cash flow, unless a registered auditor who is conducting the auditing services of an entity is satisfied about the criteria specified in subsection (2).

(2) The criteria referred to in subsection (1) are—

- (a) that the registered auditor has carried out the auditing services free from any restrictions whatsoever and in compliance, so far as applicable, with auditing pronouncements relating to the conduct of the audit; 5
- (b) that the registered auditor has by means of such methods as are reasonably appropriate having regard to the nature of the entity satisfied himself or herself of the existence of all assets and liabilities shown on the financial statements; 10
- (c) that proper accounting records have been kept in connection with the entity in question so as to reflect and explain all its transactions and record all its assets and liabilities correctly and adequately;
- (d) that the registered auditor has obtained all information, vouchers and other documents which in the registered auditor's opinion were necessary for the proper performance of the registered auditor's duties; 15
- (e) that the registered auditor has not had occasion, in the course of the auditing services or otherwise during the period to which the auditing services relate, to send a report to the Regulatory Board under section 45 relating to a reportable irregularity or that, if such a report was so sent, the registered auditor has been able, prior to expressing the opinion referred to in subsection (1), to send to the Regulatory Board a notification under section 45 that the registered auditor has become satisfied that no reportable irregularity has taken place or is taking place; 20
- (f) that the registered auditor has complied with all laws relating to the auditing services of that entity; and 25
- (g) that the registered auditor is satisfied, as far as is reasonably practicable having regard to the nature of the entity and of the auditing services carried out as to the fairness or the truth or the correctness, as the case may be, of the financial statements. 30

(3) If a registered auditor or, where the registered auditor is a member of a firm, any other member of that firm was responsible for keeping the books, records or accounts of an entity, the registered auditor must, in reporting on anything in connection with the business or financial affairs of the entity, indicate that the registered auditor or that other member of the firm was responsible for keeping those accounting records. 35

(4) For the purpose of subsection (3), a person must not be regarded as responsible for keeping the books, records or accounts of an entity by reason only of that person making closing entries, assisting with any adjusting entries or framing any financial statements or other document from existing records.

(5) A registered auditor may not conduct the auditing services of any financial statements of an entity, whether as an individual registered auditor or as a member of a firm, if, at any time during a period to which those financial statements relate or at any time during the two years ending at the beginning of that period, the registered auditor has or had a conflict of interest in respect of that entity as prescribed by the Regulatory Board. 45

### **Duty to report on irregularities**

**45.** (1) (a) A nominated registered auditor of an entity that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that entity must, without delay, send a written report to the Regulatory Board.

(b) The report must give particulars of the reportable irregularity referred to in subsection (1)(a) and must include such other information and particulars as the nominated registered auditor considers appropriate. 50

(2) (a) The nominated registered auditor must within three days of sending the report to the Regulatory Board notify the members of the management board of the entity in writing of the sending of the report referred to in subsection (1) and the provisions of this section. 55

(b) A copy of the report to the Regulatory Board must accompany the notice.

(3) The nominated registered auditor must as soon as reasonably possible but no later than 30 days from the date on which the report referred to in subsection (1) was sent to the Regulatory Board— 60

- (a) take all reasonable measures to discuss the report referred to in subsection (1) with the members of the management board of the entity;
- (b) afford the members of the management board of the entity an opportunity to make representations in respect of the report; and
- (c) send another report to the Regulatory Board, which report must include—
  - (i) a statement that the nominated registered auditor is of the opinion that—
    - (aa) no reportable irregularity has taken place or is taking place; or
    - (bb) the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant; or
    - (cc) the reportable irregularity is continuing; and
  - (ii) detailed particulars and information supporting the statement referred to in subparagraph (i).

(4) The Regulatory Board must as soon as possible after receipt of a report containing a statement referred to in paragraph (b)(i)(cc) of subsection (3), notify any appropriate regulator in writing of the details of the reportable irregularity to which the report relates and provide it with a copy of the report.

(5) For the purpose of the reports referred to in subsections (1) and (3), a registered auditor may carry out such investigations as the registered auditor may consider necessary and, in performing any duty referred to in the preceding provisions of this section, the registered auditor must have regard to all the information which comes to the knowledge of the registered auditor from any source.

(6) Where any entity is sequestrated or liquidated, whether provisionally or finally, and a nominated registered auditor at the time of the sequestration or liquidation—

- (a) has sent or is about to send a report referred to in subsection (1) or (3), the report must also be submitted to a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, at the same time as the report is sent to the Regulatory Board or as soon as reasonably possible after his or her appointment; or
- (b) has not sent a report referred to in subsection (1) or (3), and is requested by a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, to send a report, the nominated registered auditor must as soon as reasonably possible—
  - (i) send the report together with a motivation as to why a report was not sent; or
  - (ii) submit a notice that in the registered auditor's opinion no report needed to be submitted, together with a justification of the opinion.

### Limitation of liability

46. (1) In respect of any opinion expressed or report or statement made by a registered auditor in the ordinary course of duties the registered auditor does not incur any liability to a client or any third party, unless it is proved that the opinion was expressed, or the report or statement made, maliciously or pursuant to a negligent performance of the registered auditor's duties.

(2) Despite subsection (1), a registered auditor incurs liability to third parties who have relied on an opinion, report or statement of that registered auditor for financial loss suffered as a result of having relied thereon, only if it is proved that the opinion was expressed, or the report or statement was made, pursuant to a negligent performance of the registered auditor's duties and the registered auditor—

- (a) knew, or could in the particular circumstances reasonably have been expected to know, at the time when the negligence occurred in the performance of the duties pursuant to which the opinion was expressed or the report or statement was made—
    - (i) that the opinion, report or statement would be used by a client to induce the third party to act or refrain from acting in some way or to enter into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or
    - (ii) that the third party would rely on the opinion, report or statement for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person;
- or

- (b) in any way represented, at any time after the opinion was expressed or the report or statement was made, to the third party that the opinion, report or statement was correct, while at that time the registered auditor knew or could in the particular circumstances reasonably have been expected to know that the third party would rely on that representation for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person. 5
- (3) Nothing in subsections (1) and (2) confers upon any person a right of action against a registered auditor which, but for the provisions of those subsections, the person would not have had. 10
- (4) For the purposes of subsection (2) the fact that a registered auditor performed the functions of a registered auditor is not in itself proof that the registered auditor could reasonably have been expected to know that—
- (a) the client would act as contemplated in paragraph (a)(i) of that subsection; or 15
- (b) the third party would act as contemplated in paragraph (a)(ii) or paragraph (b) of that subsection.
- (5) Subsections (1) and (2) do not affect any additional or other liability of a registered auditor arising from—
- (a) a contract between a third party and the registered auditor; or 20
- (b) any other statutory provision.
- (6) A registered auditor may incur liability to any partner, member, shareholder, creditor or client of an entity or to any third party if the registered auditor fails to report a reportable irregularity in accordance with section 45.
- (7) A registered auditor may not through an agreement or in any other way limit or reduce the liability that such auditor may incur in terms of this section. 25

## CHAPTER V

### ACCOUNTABILITY OF REGISTERED AUDITORS

#### Inspections

47. (1) (a) The Regulatory Board, or any person authorised by it, may at any time inspect or review the practice of a registered auditor and the effective implementation of any training contracts and may for these purposes inspect and make copies of any information, including but not limited to any working papers, statements, correspondence, books or other documents, in the possession or under the control of a registered auditor. 30 35
- (b) Despite the generality of paragraph (a), the Regulatory Board, or any person authorised by it, must at least annually inspect or review the practice of a firm registered as a public interest company as defined in the Companies Act, 1973 (Act No. 61 of 1973).
- (2) The Regulatory Board may recover the costs of an inspection under this section from the registered auditor concerned. 40
- (3) A registered auditor must, at the request of the Regulatory Board or the person authorised by it, produce any information, including but not limited to any working papers, statements, correspondence, books or other documents, and, subject to the provisions of the common law or any other law, may not refuse to produce such information even though the registered auditor is of the opinion that the information contains confidential information about a client. 45
- (4) A registered auditor who acts in good faith during an inspection of the public practice of the registered auditor and who produces information under subsection (3) may not be held liable criminally or under civil law because of the production of the information. 50
- (5) No person who is or was concerned with the performance of any function under this section may disclose any information obtained in the performance of that function except—
- (a) for the purpose of an investigation or a hearing under this Chapter; 55
- (b) to a person authorised for the purpose by the Regulatory Board and who of necessity requires it for the performance of functions under this Act;
- (c) if the person of necessity supplies it in the performance of functions under this Act;

- (d) when required to do so by order of a court of law; or
- (e) at the written request of, and to, any appropriate regulator which requires it for the institution, or an investigation with a view to the institution, of any disciplinary action or criminal prosecution.

### **Investigation of charge of improper conduct** 5

**48.** (1) The Regulatory Board must refer any matter brought against a registered auditor to the investigating committee appointed under section 20 if the Regulatory Board—

- (a) on reasonable grounds suspects that a registered auditor has committed an act which may render him or her guilty of improper conduct; or 10
- (b) is of the opinion that a complaint, charge or allegation of improper conduct, whether prescribed or not, which has been brought against a registered auditor by any person appears to be justified.

(2) (a) If, in the course of any proceedings before any court of law, it appears to the court that there is *prima facie* proof of improper conduct on the part of a registered auditor the court must direct a copy of the record of the proceedings, or such part thereof as relates to that conduct, to be sent to the Regulatory Board. 15

(b) Despite the provisions of any other law, whenever it appears to an appropriate regulator that there is *prima facie* proof of improper conduct on the part of a registered auditor, the official must forthwith send a report of that conduct to the Regulatory Board. 20

(c) The Regulatory Board must refer to an investigating committee any record or report received by it under this subsection.

(3) At the request of the Regulatory Board, the investigating committee must—

- (a) investigate the matter; and
- (b) obtain evidence to determine whether or not in its opinion the registered auditor concerned may be charged and, if so, recommend to the Regulatory Board the charge or charges that may be preferred against that registered auditor. 25

(4) The investigating committee may not question the registered auditor concerned unless the investigating committee informs the registered auditor that he or she— 30

- (a) has the right to be assisted or represented by another person; and
- (b) is not obliged to make any statement and that any statement made may be used in evidence against the registered auditor.

(5) (a) In investigating a charge of improper conduct the investigating committee may— 35

- (i) require the registered auditor to whom the charge relates or any other person to produce to the committee any information, including but not limited to any working papers, statements, correspondence, books or other documents, which is in the possession or under the control of that registered auditor or other person and which relates to the subject matter of the charge, including specifically, but without limitation, any working papers of the registered auditor; 40
- (ii) inspect and, if the investigating committee considers it appropriate, retain any such information for the purposes of its investigations; and
- (iii) make copies of and take extracts from such information. 45

(b) The provisions of this subsection apply regardless of whether the registered auditor is of the opinion that such information contains confidential information about a client.

(6) Nothing in this section limits or affects the right of any professional body to take disciplinary or other action against any of its members in accordance with its constitution and rules. 50

(7) The investigating committee must, after the conclusion of the investigation, submit a report stating its recommendations to the Regulatory Board regarding any matter referred to it in terms of this section.

### **Charge of improper conduct** 55

**49.** (1) The Regulatory Board must charge a registered auditor with improper conduct if the investigating committee recommends that sufficient grounds exist for a charge to be preferred against such a registered auditor.



- (2) The Regulatory Board must furnish a charge sheet to the registered auditor concerned by hand or registered mail.
- (3) A charge sheet must inform the registered auditor charged—
- (a) of the details and nature of the charge;
  - (b) that he or she must, in writing, admit or deny the charge; 5
  - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
  - (d) of the period, which must be reasonable but may not exceed 60 days, within which his or her plea in terms of paragraph (b) must be submitted to the Regulatory Board. 10
- (4) (a) If a registered auditor charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged.
- (b) The Regulatory Board may, subject to section 51(2), impose a penalty contemplated in section 51(3)(a) or (b) on a registered auditor who has admitted guilt in terms of paragraph (a). 15
- (5) The acquittal or the conviction of a registered auditor by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge. 20

### Disciplinary hearing

- 50.** (1) A disciplinary hearing must be conducted by the disciplinary committee constituted in accordance with section 24. 25
- (2) The disciplinary committee, for the purposes of this section, may appoint a person to assist it in the performance of its functions.
- (3) A hearing before the disciplinary committee is open to the public except where, in the opinion of the chairperson of the disciplinary committee, any part of the hearing should be held in camera. 30
- (4) (a) The disciplinary committee may, for the purposes of a hearing, subpoena any person—
- (i) who may be able to give material information concerning the subject of the hearing; or
  - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any information, including but not limited to any working papers, statements, correspondence, books or other documents, which has any bearing on the subject of the hearing, 35
- to appear before the disciplinary committee at the time and place specified in the subpoena, to be questioned or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents. 40
- (b) A subpoena issued in terms of paragraph (a) must—
- (i) be in the prescribed form;
  - (ii) be signed by the chairperson of the disciplinary committee or, in his or her absence, by any member of the disciplinary committee; and 45
  - (iii) be served on the registered auditor concerned personally or by sending it by registered mail.
- (5) The disciplinary committee may retain any information, including but not limited to any working papers, statements, correspondence, books or other documents produced in terms of subsection (4), for the duration of the hearing. 50
- (6) The chairperson of the disciplinary committee may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (4).
- (7) At a hearing the registered auditor charged—
- (a) (i) may personally be present at the hearing of the proceedings; 55
  - (ii) may be assisted or represented by another person in conducting the proceedings;
  - (iii) has the right to be heard;
  - (iv) may call witnesses; 60
  - (v) may cross-examine any person called as a witness in support of the charge; and

- (vi) may have access to documents produced in evidence; and
- (b) (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 49(3)(b) or (c); or 5
- (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged.
- (8) The person referred to in subsection (2) may during a hearing—
  - (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; 10
  - (b) question any person who was subpoenaed in terms of subsection (4); or
  - (c) call anyone to give evidence or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which such person suspects or believes to have a bearing on the subject of the hearing. 15
- (9) (a) A witness who has been subpoenaed may not—
  - (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena; 20
  - (ii) refuse to be sworn in or to be affirmed as a witness;
  - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
  - (iv) fail to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents in his or her possession or custody or under his or her control, which he or she has been required to produce. 25
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary committee from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary committee be made available to him or her. 30
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of any information, including but not limited to any working papers, statements, correspondence, books or other documents, or to the production of such information to the disciplinary committee by any person called in terms of this section as a witness. 35
- (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
- (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing any information, including but not limited to any working papers, statements, correspondence, books or other documents, which he or she is in terms of this section required to give or produce. 40
- (10) The record of evidence which has a bearing on the charge before the disciplinary committee, and which was presented before any committee which investigated an event or conduct, is admissible without further evidence being led if— 45
  - (a) the record is accompanied by a certificate from the chairperson; and
  - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (11) If the improper conduct with which the registered auditor is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered auditor as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court. 50 55

### **Proceedings after hearing**

**51.** (1) After the conclusion of the hearing the disciplinary committee must, within 30 days—

- (a) decide whether or not the registered auditor charged is guilty of improper conduct; 60

- (b) if the disciplinary committee finds that the registered auditor charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances; and
- (c) inform the registered auditor charged and the Regulatory Board of the finding.
- (2) A registered auditor found guilty of improper conduct in terms of this section may— 5
- (a) address the disciplinary committee in mitigation of sentence; and
- (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered auditor charged is found guilty of improper conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary committee must either— 10
- (i) caution or reprimand the registered auditor;
- (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year's imprisonment prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991); 15
- (iii) suspend the registration of the registered auditor concerned for a specific period; or
- (iv) cancel the registration of the registered auditor concerned and remove his or her name from the register referred to in section 6. 20
- (b) The disciplinary committee may take decisions under more than one of the subparagraphs of paragraph (a).
- (4) A disciplinary committee which makes a finding of guilty as mentioned in subsection (3) must order any person upon whom any sanction is imposed under that subsection to pay such reasonable costs as have been incurred by an investigating committee and the disciplinary committee in connection with the investigation and hearing in question, or such part thereof as the disciplinary committee considers just. 25
- (5) In any case where—
- (a) a person whose conduct has been the subject of a hearing under section 50 has not been found guilty of improper conduct; or 30
- (b) no sanction has been imposed on a person whose conduct was the subject of a hearing,
- the disciplinary committee may nevertheless order that person to pay any costs unnecessarily incurred by the disciplinary committee or the investigating committee because of the conduct of that person. 35
- (6) At the conclusion of the hearing the disciplinary committee must notify the Regulatory Board of its finding.
- (7) The Regulatory Board may, if it deems it appropriate, publish the finding and the sanction imposed in terms of subsection (3).
- (8) (a) The Regulatory Board must give effect to the decision of the disciplinary committee. 40
- (b) Where an order as to costs has been made under subsection (4) or (5), the amount thereof shall be recoverable by the Regulatory Board from the person concerned, and any amount so recovered must be paid into the funds of the Regulatory Board.

## CHAPTER VI 45

### OFFENCES

#### Reportable irregularities and false statements in connection with audits

- 52.** (1) A registered auditor who—
- (a) fails to report a reportable irregularity in accordance with section 45; or
- (b) for the purposes of, or in connection with, the auditing services of any financial statement knowingly or recklessly expresses an opinion or makes a report or other statement which is false in a material respect, shall be guilty of an offence. 50
- (2) Where the registered auditor failing to report a reportable irregularity or conducting auditing services is a firm, subsection (1) applies to the member of the firm conducting the auditing services, but nothing in this subsection prevents the taking of disciplinary action under Chapter V in respect of the firm concerned, in addition to or instead of the individual registered auditor conducting the auditing services. 55

(3) A person convicted of an offence under this section is liable to a fine or to imprisonment for a term not exceeding 10 years or to both a fine and such imprisonment.

#### **Offences relating to disciplinary hearings**

**53.** (1) Subject to section 50(4), a person is guilty of an offence if—

- (a) having been duly summoned under section 50, the person fails, without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until excused from further attendance by the chairperson of the disciplinary committee; 5
- (b) having been called under section 50, the person refuses to be sworn or to affirm as a witness or fails without sufficient cause to answer fully and satisfactorily to the best of the person's knowledge and belief all questions lawfully put concerning the subject of the hearing; or 10
- (c) having been called under section 50 and having possession, custody or control of any information, including but not limited to any working papers, statements, correspondence, books or other documents, refuses to produce it when required to do so. 15

(2) A witness before a disciplinary committee who, having been duly sworn or having made an affirmation, gives a false answer to any question lawfully put to the witness or makes a false statement on any matter, knowing the answer or statement to be false, is guilty of an offence. 20

(3) Any person who wilfully hinders any person acting in the capacity of a member of a disciplinary committee in the exercise of any power conferred upon that person by or under section 51 is guilty of an offence.

(4) A person convicted of an offence under this section is liable to a fine or to imprisonment for a period of five years or to both a fine and such imprisonment. 25

#### **Offences relating to public practice**

**54.** (1) Any person who contravenes section 41 is guilty of an offence and on conviction liable to a fine or in default of payment to imprisonment not exceeding five years or to both fine and such imprisonment.

- (2) Any person who— 30
  - (a) contravenes any provision of section 47; or
  - (b) obstructs or hinders any person in the performance of functions under that section,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year. 35

## **CHAPTER VII**

### **GENERAL MATTERS**

#### **Powers of Minister**

**55.** (1) The Minister may, by notice in the *Gazette*, make regulations regarding—

- (a) any matter relating to the functioning of the Regulatory Board that is necessary to ensure the Regulatory Board's efficiency or to promote good order; and 40
- (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 45

(2) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to make such regulations and the power to appoint the members of the Regulatory Board, to the Director-General or any other official of the National Treasury.

## Indemnity

56. Neither the Regulatory Board or any member or employee or chief executive thereof, nor a committee of the Regulatory Board or any member thereof, nor the Public Accountants' and Auditors' Board or any member thereof, incurs any liability in respect of any act or omission performed in good faith under or by virtue of a provision in this Act, unless that performance was grossly negligent. 5

## Administrative matters

57. Subject to the provisions of this Act, where the Regulatory Board takes a decision or any other step of an administrative nature under this Act that affects the rights and duties of another person, the Regulatory Board must— 10

- (a) publish or otherwise make known the nature and effect thereof in a written, printed or electronic manner to any affected persons and bodies in a manner designed to ensure that they acquire full knowledge thereof; and
- (b) comply with any applicable requirement of just administrative action, including the furnishing of reasons for discretionary decisions imposed by, under or by virtue of any law. 15

## Repeal and amendment of laws

58. (1) Subject to section 60, the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of that Schedule.

(2) With effect from the date on which this Act comes into force, and in respect of damages suffered by any person as a result of an act or omission of a registered auditor committed on or after that date, the reference in section 1 of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), to "damage" must be construed as a reference also to damage caused by a breach, by the registered auditor, of a term of a contract concluded with the registered auditor. 25

## Transitional provisions

59. (1) (a) From the date of commencement of this Act, the Regulatory Board must be regarded as the successor to the Public Accountants' and Auditors' Board.

(b) In order to give effect to that succession—

- (i) any board members of the Public Accountants' and Auditors' Board who immediately prior to the commencement of this Act were members of that Board, must be deemed to have been appointed members of the Regulatory Board for the remainder of the period for which each member was appointed as a board member under the Public Accountants' and Auditors' Act, 1991; 30
- (ii) all property which immediately before the date this Act comes into force was property of the Public Accountants' and Auditors' Board shall, by virtue of this Act, without any assignment or other form of transfer or the need for any consent become on that date property of the Regulatory Board; 35
- (iii) all rights or obligations of the Public Accountants' and Auditors' Board, whether contractual or otherwise, which were in existence immediately before the date this Act comes into force and do not fall within subparagraph (ii) shall become, on that date, rights or obligations of the Regulatory Board and, in their application or construction, be treated for all purposes as if the Public Accountants' and Auditors' Board and the Regulatory Board were the same person in law; 40 45
- (iv) regarding anything done or falling to be done, or any other event occurring, on or after the date this Act comes into force, any reference in an existing document to the Public Accountants' and Auditors' Board must be construed as or, as the case may require, as including a reference to the Regulatory Board; and 50
- (v) for the purposes only of section 197 of the Labour Relations Act, 1995 (Act No. 6 of 1995), the provisions of this subsection must be regarded as the transfer of a business from the Public Accountants' and Auditors' Board to the Regulatory Board.

(c) The Registrar of Deeds concerned must, at the request of the Regulatory Board and on submission of the relevant title deeds and other documents, make the necessary entries and endorsements in respect of his or her registers and other documents in order to give effect to a transfer in terms of subsection (1).

(d) No transfer duty, stamp duty or other fees shall be payable in respect of such transfer, entry or endorsement. 5

(2) Subject to subsection (3), any unfinished business of the Public Accountants' and Auditors' Board on the date this Act comes into force, which is dealt with by that Board under a provision of the Public Accountants' and Auditors' Act, 1991, and for which no corresponding provision appears in this Act, must be completed by that Board as if this Act had not been passed. 10

(3) (a) Any proceedings in connection with an application for registration as accountant and auditor still pending on the commencement date must, with effect from that date, be deemed to be proceedings for registration as an auditor contemplated in this Act and must further be administered, considered and completed by the Regulatory Board. 15

(b) In the case of any such proceedings, and in the case of any new applications for registration as an auditor received by the Regulatory Board, the requirements for registration set out in section 15(2) and (4) of the Public Accountants' and Auditors' Act, 1991, must despite the repeal of that Act and any inconsistency with a provision of this Act be deemed to be still applicable until a date determined by the Minister by notice in the *Gazette*. 20

(4) The Education and Training Committee of the Public Accountants' and Auditors' Board, as it existed immediately prior to the commencement date, is deemed to be a committee established by the Regulatory Board under section 20 to determine the requirements for the professional development and achievement of professional competence. 25

(5) Any committee performing, immediately prior to the commencement date, an investigating or disciplinary function under the Public Accountants' and Auditors' Act, 1991, remains validly constituted and must complete its functions after that date as if this Act had not been passed. 30

(6) Any person who immediately prior to the commencement date was registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991, is deemed to be registered as an auditor under this Act.

(7) Any training contract registered, any recognition of educational institutions or recognition of training officers under the Public Accountants' and Auditors' Act, 1991, is deemed to be a registration or recognition under this Act. 35

(8) (a) The Examination Regulations as contained in the Manual of Information: Guidelines for Registered Accountants and Auditors, issued by the Public Accountants' and Auditors' Board as at the commencement date, must be deemed to have been prescribed by the Regulatory Board in respect of registered auditors. 40

(b) The Disciplinary Regulations as contained in the said Manual (excluding paragraphs 2.1 to 2.1.21, inclusive, thereof) must be deemed to have been prescribed by the Regulatory Board.

(c) The Code of Professional Conduct as contained in the said Manual (including paragraphs 1 to 2.1.21, inclusive, of the Disciplinary Regulations) must be deemed to have been prescribed by the Regulatory Board. 45

(d) The Circulars as contained in the said Manual must be deemed to have been issued by the Regulatory Board.

(e) The Recognition Model as contained in the said Manual must be deemed to have been prescribed by the Regulatory Board. 50

(f) The auditing pronouncements issued by the Public Accountants' and Auditors' Board are, with effect from the commencement date, deemed to have been issued by the Regulatory Board.

(9) Subject to the provisions of this Act, on and after the commencement date, anything which was done under a provision of a law repealed by section 58 and which could be done under a corresponding provision of this Act is deemed to have been done under that corresponding provision. 55

(10) A reference in any of the preceding subsections to the commencement date is a reference to the date that subsection comes into force. 60

**Short title and commencement**

**60.** This Act is called the Auditing Profession Act, 2005, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

**SCHEDULE****LAWS REPEALED**

5

No. and year of Act	Short title	Extent of repeal
Act No. 80 of 1991	Public Accountants' and Auditors' Act, 1991	The repeal of the whole.
Act No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	The repeal of section 107.

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## MEMORANDUM ON THE OBJECTS OF THE AUDITING PROFESSION BILL, 2005

### 1. BACKGROUND OF BILL

1.1 The failures of numerous companies, both internationally and in South Africa, have raised concerns regarding the independence and conduct of auditors. In light of these failures, countries around the world have taken legislative action to introduce stringent requirements for the conduct and discipline of auditors.

1.2 In South Africa the auditing profession is currently regulated under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991) ("PAA Act"). The need has arisen to replace this Act and to improve the integrity of South Africa's financial sector and financial reporting by introducing a more comprehensive and modern legislative framework for overseeing and regulating the auditing profession.

1.3 The Bill must be read together with the Companies Amendment Bill, 2005, which is still to be introduced. The Companies Amendment Bill entrenches and safeguards the independence of auditors within the corporate environment.

### 2. OBJECTS OF BILL

2.1 The Bill seeks to—

- (a) contribute towards the protection of the public interest in the Republic of South Africa in respect of auditing services rendered by registered auditors;
- (b) establish a juristic person to be known as the Independent Regulatory Board for Auditors ("the Regulatory Board") that will be responsible for overseeing and regulating the auditing profession;
- (c) prescribe standards for auditor ethics in the promotion and maintenance of internationally comparable standards of professional ethics by registered auditors; and
- (d) prescribe standards for auditing in the development and maintenance of internationally comparable auditing standards in the Republic in a manner that is responsive to the expectations of business, financial institutions and the general public.

2.2 The Bill comprises seven Chapters and a Schedule which seeks to repeal the current "PAA Act".

#### Chapter I

This Chapter sets out the objects of the Bill, its definitions and other interpretation rules to be applied in the Act.

#### Chapter II

This Chapter is subdivided into seven parts, and addresses the establishment of the Regulatory Board. This Board replaces the Public Accountants' and Auditors' Board, "PAAB", which was set up in terms of the PAA Act. There are various provisions which assign authority or responsibility to the Regulatory Board to regulate the audit profession.

**Part 1:** provides for the establishment of the Regulatory Board as a juristic person.

**Part 2:** deals with the functions of the Regulatory Board.

**Part 3:** assigns powers to the Regulatory Board, including the power to make rules and to determine its own staff establishment and for the appointment of a chief executive officer.

**Part 4:** deals with the governance of the Regulatory Board. It provides for the appointment of members, their term of office, disqualification and the like. Certain duties and responsibilities of an accounting nature, in addition to those set out in the Public Finance Management Act, are assigned to the Regulatory Board.



**Part 5:** provides for the establishment of various committees which will assist the Regulatory Board in the performance of its functions.

**Part 6:** sets out the funding and financial management of the Regulatory Board.

**Part 7:** National government is given oversight and executive authority, through the Minister. The Minister has authority to appoint ministerial representatives, to oversee and issue directives to the Regulatory Board to undertake any function that will give effect to the objects of the Bill and to investigate the affairs of or financial position of the Regulatory Board.

### **Chapter III**

This Chapter has two parts.

**Part 1:** provides for application procedures for accreditation of professional bodies, prescribes requirements with which an applicant for accreditation must comply and authorises the Regulatory Board to accept or cancel applications for accreditation.

**Part 2:** deals with registration of individual auditors and firms and authorises the Regulatory Board to cancel registration under circumstances set out in this Part.

### **Chapter IV**

This Chapter prescribes the practice of the auditing profession and liability of registered auditors. It further imposes a general obligation on registered auditors to report on irregularities which they detect in performing their work.

### **Chapter V**

The Regulatory Board is given authority to inspect or review the practice of a registered auditor and to investigate charges of improper conduct. The disciplinary committee is empowered to subpoena any person to give material information concerning the subject of a hearing and to question witnesses.

### **Chapter VI**

This Chapter provides for the enforcement of the Bill through the creation of offence provisions and a scale of penalties on conviction of such offence.

### **Chapter VII**

This Chapter sets out general provisions including the power of the Minister to make regulations to give effect to the objects of the Bill; provides an indemnity in respect of any act or omission performed in good faith under or by virtue of a provision in this Act, unless that performance was grossly negligent; provides for effective transition from the current Board in terms of the PAA Act to that established by this Bill.

## **3. ORGANISATIONS AND INSTITUTIONS CONSULTED**

The following institutions and individuals commented on the Bill during the public consultation process that took place from December 2004 to February 2005:

- ABASA;
- ACCA
- Accounting Standards Board
- Association for Exploited Retirement & Medical Aid Fund Members
- BDO Spencer Steward
- Brait (M E King)
- Bruce Stoble
- CPASA
- CR Follet-Smith
- De Beers
- Deloitte

- Dr Len Konar
- Ernst & Young
- Fazal Hasen-Bootha
- Francois Groepe
- GC Cloete & Associates
- G L Paris
- Grant Thornton
- G T Zaiman
- Jannie Rossouw
- JD Group
- JM Conradie Registered Accountants and Auditors
- KPMG
- Moores Rowland
- M R Ngaba
- PAAB
- Pieter Lombaard
- PWC
- SAICA
- SAIGA
- Selwyn Farber
- SizweNtsaluba VSP Inc
- Willem Oppermann.

A number of additional institutions, such as the Department of Trade and Industry, the Financial Services Board, the Banking Supervision Department of the South African Reserve Bank, the Office of the Auditor-General, the South African Institute of Chartered Accountants and the like have also been consulted on the Bill.

#### **4. FINANCIAL IMPLICATIONS FOR STATE**

The Bill will have financial implications for the State as it provides for the partial funding of the Independent Regulatory Board for Auditors by Government. This is necessary to enhance the independence of the Regulatory Board.

#### **5. CONSTITUTIONAL IMPLICATIONS**

None.

#### **6. PARLIAMENTARY PROCEDURE**

6.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed 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.

6.2 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.