

REPUBLIC OF SOUTH AFRICA

AUDITING PROFESSION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
the Bill and prior notice published in Government Gazette No. 43009 of 10 February 2020)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 2—2020]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Auditing Profession Act, 2005, so as to insert a definition; to strengthen the governance of the Regulatory Board; to strengthen the investigating and disciplinary processes; to provide for the power to enter and search premises and to subpoena persons with information required for an investigation or disciplinary process; to provide for the power to issue a warrant for purposes of entering and searching of premises; to provide for processes to be followed after an investigation; to provide for a duty to disclose information; to provide for sanctions in admission of guilt process and following a disciplinary hearing; to provide for offences relating to investigation and disciplinary process; to provide for the protection of personal information; to provide for transitional measures; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 26 of 2005

1. Section 1 of the the Auditing Profession Act, 2005 (hereinafter referred to as the “principal Act”) is hereby amended by the insertion in subsection (1) after the definition of “company” of the following definition: 5

“ ‘**Constitution**’ means the Constitution of the Republic of South Africa, 1996;”.

Amendment of section 4 of Act 26 of 2005

2. Section 4 of the principal Act is hereby amended by the addition of the following subsection: 10

“(3) The Regulatory Board must, with the approval of the Minister, determine a policy framework for performing its functions in terms of subsection (1).”.

Amendment of section 11 of Act 26 of 2005

3. Section 11 of the principal Act is hereby amended—
(a) by the substitution for subsection (2) of the following subsection: 15

“(2) The Minister must appoint competent persons [**who must include registered auditors,**] who are independent of the auditing profession to effectively manage and guide the activities of the Regulatory Board, based on their knowledge and experience.”;

- (b) by the insertion after subsection (2) of the following subsection:
 “(2A) The members appointed in terms of subsection (2) must include—
- (a) a person who was formerly a registered auditor and has at least 10 years’ experience in auditing; and
 - (b) an advocate or attorney who has at least 10 years’ experience in practicing law.”;
- (c) by the substitution for subsection (4) of the following subsection:
 “(4) **[Disregarding any vacancy in its membership, not more than 40% of the members of the Regulatory Board may be registered auditors]** None of the members appointed in terms of this section may be a registered auditor or registered candidate auditor.”;
- (d) by—
- (i) the deletion in subsection (7) of the word “and” at the end of paragraph (b);
 - (ii) the substitution in subsection (7) at the end of paragraph (c) for the expression “.” of the expression “; and”; and
 - (iii) the addition in subsection (7) after paragraph (c) of the following paragraph:
 “(d) the qualifications of every person appointed.”; and
- (e) by the addition after subsection (7) of the following subsection:
 “(8) No member may—
- (a) share, directly or indirectly, in any of the profits of a registered auditor or registered candidate auditor; or
 - (b) receive payments from a registered auditor or registered candidate auditor.”.

Amendment of section 12 of Act 26 of 2005

4. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
 “(1) A member of the Regulatory Board appointed in terms of section 11 holds office for such period, but not exceeding **[two]** three years, as the Minister may determine at the time of his or her appointment, but may, on request of the Minister, continue to hold office for a further period not exceeding three months.”.

Amendment of section 20 of Act 26 of 2005

5. Section 20 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:
 “(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]** twice a year.”.

Substitution of section 24 of Act 26 of 2005

6. The following section is hereby substituted for section 24 of the principal Act:

“Investigating committee

- 24.** (1) The investigating committee referred to in section 20(2)(e) must be independent of the auditing profession and include—
- (a) two individuals who were registered auditors and each having at least 10 years’ experience in auditing; and
 - (b) an advocate or attorney who has at least 10 years’ experience in practicing law.
- (2) No member of the investigating committee may—
- (a) share, directly or indirectly, in any of the profits of a registered auditor or registered candidate auditor; or
 - (b) receive payments from a registered auditor or registered candidate auditor.”.

Insertion of sections 24A to 24B in Act 26 of 2005

7. The following sections are hereby inserted in the principal Act after section 24:

“Disciplinary committee

- 24A.** (1) The Regulatory Board must appoint a disciplinary committee, referred to in section 20(2)(f), whose members are independent of the auditing profession, consisting of as many competent members as it may determine necessary to deal with disciplinary hearings in terms of this Act. 5
- (2) The disciplinary committee must have one third of its members being—
- (a) individuals who were registered auditors and each having at least 10 years’ experience in auditing; and 10
 - (b) advocates or attorneys who each has at least 10 years’ experience in practicing law.
- (3) No member of the disciplinary committee may—
- (a) share, directly or indirectly, in any of the profits of a registered auditor or registered candidate auditor; or 15
 - (b) receive payments from a registered auditor or registered candidate auditor.
- (4) The Regulatory Board must appoint a member of the disciplinary committee who is an advocate or attorney as chairperson. 20
- (5) The functions of the chairperson of the disciplinary committee are to—
- (a) appoint from among the members of the disciplinary committee a disciplinary hearing panel for every hearing;
 - (b) monitor consistency in the application of disciplinary hearing rules by disciplinary hearing panels; and 25
 - (c) facilitate efficient disciplinary hearings.
- (6) Despite section 20(5), read with section 15(4), when the disciplinary committee convenes a disciplinary hearing under section 50, the hearing must be conducted by a panel of three members including a member referred to in subsection (2)(a) and a member referred to in subsection (2)(b). 30
- (7) Members of a disciplinary hearing panel must elect one of the members to chair the proceedings of the disciplinary hearing.
- (8) A member of the disciplinary committee may not participate in a panel contemplated in subsection (6) if he or she has an interest in a matter considered by the disciplinary hearing panel. 35
- (9) A member of the disciplinary committee holds office for a period of three years or such shorter period as the Regulatory Board may determine, from the date of his or her appointment. 40
- (10) A member of the disciplinary committee may be re-appointed at the expiry of a term for a further term not exceeding three years.
- (11) A person may resign as a member of the disciplinary committee by giving at least three months’ written notice to the Regulatory Board or a shorter period of notice approved by the Regulatory Board. 45
- (12) A member of the disciplinary committee may not use his or her position or any information by virtue of his or her work for the committee to—
- (a) improperly benefit himself or herself or another person; 50
 - (b) impede the committee’s ability to perform its functions.

Subcommittees of Regulatory Board

- 24B.** (1) The Regulatory Board must establish an enforcement committee to deal with disciplinary matters and may establish other subcommittees to assist with the performance of its functions. 55
- (2) The Regulatory Board must appoint the members of a subcommittee referred to in subsection (1) from among its members.
- (3) The enforcement committee must include—
- (a) a person who was formerly a registered auditor and has at least 10 years’ experience in auditing; and

- (b) an advocate or attorney who has at least 10 years' experience in practicing law."

Amendment of section 37 of Act 26 of 2005

8. Section 37 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection: 5
 “(1A) An individual may only be registered with the Regulatory Board if he or she is a member of a professional body accredited in terms of section 32(2).”; and
- (b) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 10
 “(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,]** an offence committed prior to 15
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]”.

Amendment of section 45 of Act 26 of 2005

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9. Section 45 of the principal Act is hereby amended by the addition of the following subsection:

- “(7) If an individual registered auditor has reported an irregularity to the Regulatory Board in terms of subsection (1)—
 (a) the individual registered auditor may not be removed; and
 (b) the entity may not remove the registered auditor,
until subsection (3) is complied with.”.

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Amendment of section 48 of Act 26 of 2005

10. Section 48 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceeding paragraph (a) of the following words: 30
 “The Regulatory Board must refer a matter brought against a registered auditor to the investigating committee appointed under section 20 if the Regulatory Board—”;
- (b) by the insertion after subsection (1) of the following subsection: 35
 “(1A) Despite subsection (1), the enforcement committee referred to in section 24B may, if considered appropriate, refer a non-audit matter brought against a registered auditor to the relevant professional body accredited in terms of section 32(2) for investigation and disciplinary proceedings.”; 40
- (c) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
 “(c) The Regulatory Board must refer to **[an]** the investigation committee any record or report received by it under this subsection.”;
- (d) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 45
 “(b) obtain evidence to determine whether or not in its opinion the registered auditor concerned should be charged and, if so, recommend to the **[Regulatory Board]** enforcement committee the charge or charges that may be preferred against that registered auditor.”; and 50
- (e) by the substitution for subsections (5), (6) and (7) of the following subsections, respectively:
 “(5) (a) In investigating a charge of improper conduct the investigating committee may— 55
 (i) require or, if necessary, subpoena, the registered auditor to whom the charge relates or any other person with specific knowledge of