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Dear Imran

**SAICA COMMENT LETTER ON THE PROPOSED SAAPS 4 (REVISED 2019), LETTERS OF SPECIFIC INQUIRY TO THE ENTITY'S EXTERNAL LEGAL PRACTITIONER REGARDING LITIGATION AND CLAIMS INVOLVING THE ENTITY**

In response to the Exposure Draft: Proposed South African Auditing Practice Statement (SAAPS) 4 (Revised 2019), Letters of Specific Inquiry to the Entity's External Legal Practitioner Regarding Litigation and Claims Involving the Entity (Proposed SAAPS 4), please find included the comments prepared by SAICA.

We thank you for the opportunity to provide comments on the Proposed SAAPS 4.

Please do not hesitate to contact us should you wish to discuss any of our comments. You are welcome to contact Hayley Barker Hoogwerf ([hayleyb@saica.co.za](mailto:hayleyb@saica.co.za)).

Yours sincerely

*Signed electronically*

**Hayley Barker Hoogwerf**  
**Acting Senior Executive – Assurance and Practice**

## **SAICA'S COMMENTS**

Our comments are presented in the sequence of the questions as they have been included in the Proposed SAAPS 4. We have responded to all 3 questions and included a section on other general comments noted.

### **Response to specific questions**

#### **Question 1**

Are there any matters of principle regarding direct communication with the entity's external legal practitioner through a letter of specific inquiry, not already covered by ISA 501, that you believe should be addressed in this SAAPS?

1. SAICA welcomes the change in the format of Proposed SAAPS 4. The new format is easily understandable and is practical.
2. In relation to matters of principle that we believe have not been covered, we suggest that Proposed SAAPS 4 clarifies that it is management's responsibility to adopt policies and procedures to identify, evaluate, record and report on the outcome of any material litigation or claim.
3. SAICA notes the change in the scope of proposed SAAPS 4 and supports the removal of the content of extant SAAPS 4 that is already contained in ISA 501, *Audit Evidence-Specific Considerations for Selected Items*.
4. We do however believe that guidance relating to the following was useful and suggest that the IRBA consider re including this in Proposed SAAPS 4:
  - a. The fact that the auditor should consider ISA 620, *Using the Work of an Expert*, to ensure that the conditions prevail which allow the auditor to accept the external legal practitioner's findings or conclusions in the experts field as appropriate audit evidence. To this end, we suggest including the following as paragraph 6 under the *Scope*:

*In accordance with ISA 620, Using the Work of an Expert, before using the work of external legal practitioner to assist the auditor in obtaining sufficient appropriate audit evidence, care may need to be exercised to ensure that conditions prevail which allow the auditor to accept the external legal practitioners findings or conclusions in the experts field as appropriate audit evidence.*

- b. The situation where the entity makes use of in-house legal practitioner. To this end, we suggest including the following as paragraph 7 under the *Scope*:

*In circumstances where in-house legal counsel has the primary responsibility for litigation and claims and are in the best position to corroborate management's representations, a written request seeking information similar to that sought from external legal counsel may be obtained from in-house legal counsel. In doing this, the auditor should consider the requirements contained in ISA 500, Audit Evidence Regarding Using the Work of a Management Expert*

**Question 2**

If you have experienced practical difficulties regarding the illustrative attorney's representation letter that is contained in extant SAAPS 4, have those difficulties been addressed in the revised letter of specific inquiry in proposed SAAPS 4? If not, what changes would you propose to the illustrative letter?

5. In soliciting comments to inform this SAICA comment letter, we consulted with the SAICA Attorneys' Trust Accountants' Committee (ATAC). The ATAC is made up of practitioners and independent consultants who either use the illustrative attorney's representation letter that is contained in extant SAAPS 4, or consult on it. No comments relating to practical difficulties regarding the illustrative attorney's representation letter that is contained in extant SAAPS 4 were noted.

**Question 3**

Do you agree with the recommended effective date?

6. We support the recommended effective date of Proposed SAAPS 4 to be effective for letters of specific inquiry requested on or after 1 September 2019.

**Other general comments**

**Scope**

7. With reference to paragraph 2 of Proposed SAAPS 4, the reference to the fact that this SAAPS deals with ISA 501 seems out of place. We suggest that this be included as the first paragraph, with the current paragraph 1 then following after this.
8. In consulting with the ATAC, a comment raised was that Proposed SAAPS 4 include a recommendation that this letter of inquiry be sent to the entities insurers as well. ISA 501 does not contain a requirement for the auditor to communicate directly with the entities insurer and in considering this suggestion, the proviso in issuing SAAPS that no new requirements are establish was considered. In response to this suggestion, it is our view that the inclusion of a suggestion that the Illustrative letter contained in Proposed SAAPS 4 may be adapted and used by the auditor in directly communicating with other relevant parties, such as the entities insurers in identifying litigation and claims involving the entity. An appropriate place for inclusion of this paragraph is under the section dealing with the Scope of Proposed SAAPS 4.

**Terms Used in this SAAPS**

9. We support the inclusion of the definition of *external legal practitioner* as defined in the Legal Practice Act (Act No. 28 of 2014).
10. The inclusion of this section is useful in explaining and bridging any gaps in understanding the differences in the terminology used in the legal profession and the auditing profession. In reading the following sentence included in paragraph 8, where it states that *the reference to external legal counsel may be misunderstood*, it was not clear what the solution to addressing the potential misunderstanding was. Suggested wording change to address this is as follows:

The term "legal counsel" is not defined in South African legislation. It has been customary in South Africa to refer to an advocate as "counsel" in a representative form. Thus, reference to "external legal counsel" in a registered auditor's letter of specific inquiry may be misunderstood by the entity's legal practitioner. To this end, this SAAPS uses terminology which is appropriate in the South African environment and makes reference to "external legal practitioner", as opposed to "external legal counsel".

**Other**

11. The last paragraph on Page 9 of proposed SAAPS 4 defines the Auditing Profession Act, 2005 (Act No. 26 of 2006) as the (APA), however, this paragraph proceeds to included reference to the "Act". We suggest that the "APA" be used instead of the Act for consistency.
12. We support the clarification included in paragraph 5 of Proposed SAAPS 4 that the Proposed SAAPS 4 may be adapted by a practitioner when considering the appropriate method of specific inquiry to the entity's external legal practitioner regarding litigation and claims involving the entity on the application of the International Standards on Review Engagements (ISREs), the International Standards on Assurance Engagements (ISAEs) and the International Standards on Related Services (ISRSs).
13. We further support the inclusion of paragraph 7 which indicates that the guidance contained in this practice statement also applies to the audit of financial statements in the public sector.