

STANDING COMMITTEE ON FINANCE PUBLIC HEARINGS



Audit Profession Amendment Bill 2 of 2020

14 OCTOBER 2020

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NEW PROPOSAL

ENHANCING ETHICS

The status quo –Section 37(3)(b)

- The scope of the current criteria for **disqualification** to register as an **auditor** include conviction, whether in the Republic or elsewhere of
 - theft, fraud, forgery, uttering a forged document, perjury,
 - an offence under the prevention of Corrupt Activities Act,
 - an offence involving dishonesty;
- Current disqualification limited to **financial crimes**



ENHANCING ETHICS

The problem



- The scope of the current criteria is **too narrow**
- Persons who society should trust as auditors with the proper moral fibre and ethical fortitude extend **beyond financial crime**
- **Violent crime** is a scourge on our society, especially gender based violence and that against children

ENHANCING ETHICS

RECOMMENDATION

- Disqualify auditors or remove if:
 - Convicted of any **violent crime** for with no option of a fine;
 - Where option of fine, provide discretion to Board
- SAICA will be recommending a **SAICA bylaw amendment** so the same criteria will apply to ALL its members as well

POLICY MATTERS

PUBLIC CONSULTATION

The status quo

- Following instruction by SCOF:
 - Treasury conducted only limited stakeholder consultation then stopped (the pandemic compounded the challenge);
 - Treasury seemingly acknowledges not considering stakeholder input as also indicated in clause 4 of the Memorandum of Objects
- Seems no Social Economic Impact Assessment done as per 1 October 2015 Cabinet decision

PUBLIC CONSULTATION

Problem

PUBLIC PARTICIPATION IN THE PARLIAMENT OF SOUTH AFRICA

Share of the South
African population

9.5% AWARE

of the processes
of Parliament



Share of the South
African population with

11.5% ACCESS

to the processes
of Parliament



8.7%

Share of the South African population that

PARTICIPATES

in the processes of Parliament

- The problems and challenges are complex and interrelated
- Stakeholders impacted by proposed changes include auditees, financial markets and public, not just auditors
- Undermines a collaborative approach to addressing challenges and creating solutions

PUBLIC CONSULTATION

RECOMMENDATION

- SCOF to consider expanding its:
 - Public consultation process with stakeholders to mitigate
 - Direct input into amending the legislative text
 - Consideration whether its in the public interest to refer bill back
- SCOF to consider impact and importance of Socio Economic Impact Assessment and if it is material to legislation

PROF BODY REFERRALS

The status quo

- Professional Bodies are not part of the disciplinary processes of IRBA
- IRBA to conduct disciplinary against auditors for all improper conduct
- Professional Bodies may proceed with separate disciplinary proceedings of its members
- SAICA and IRBA have MoU that IRBA will proceed first on all auditor disciplinary matters

PROF BODY REFERRALS

Problem

IRBA challenges

CODE OF PROFESSIONAL CONDUCT

- IRBA is required to discipline auditors for matters **unrelated to audit** such as tax, business rescue, accounting, financial advice, independent review etc.
- **Significant time and resource** constraints of IRBA
- **Duplication of process** as most auditors also members of professional bodies where this would be addressed

PROF BODY REFERRALS

Problem

Professional Body challenges

- Non –audit matters very wide. Professional body scope of powers **limited to prescript** (e.g. Constitution & Bylaws)
- Only **contractual** powers to compel **evidence** from member auditors
- Only **contractual** powers to enforce **sanctions** against member auditors
- Time inefficiencies and cost wastage if process and outcomes **not binding on IRBA**
- Impact of **suspensions** not addressed
- Impact of **dual memberships** not addressed



CELEBRATING 40 YEARS OF
TRUST LEADERSHIP

PROF BODY REFERRALS

RECOMMENDATION

- Insert statutory **scope limitation** of when Prof Body can accept discretionary IRBA referral to **prescripts of Prof Body**
- Insert statutory mechanism that enables Prof Body to **compel evidence**
- Insert statutory mechanism that enables Prof Body to **enforce sanction**
- Make Prof Body **disciplinary process and sanction final**, including on as relates IRBA
- Address anomalies of suspensions and dual memberships

BOARD COMPOSITION

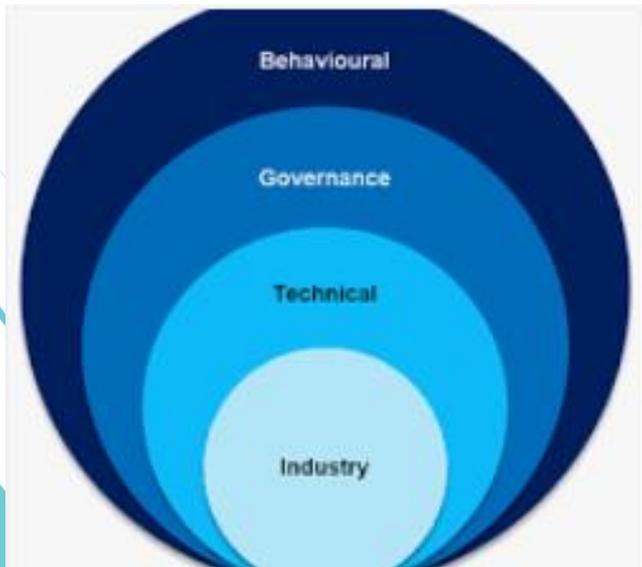
Status Quo



- Registered auditors may be on the Regulatory Board
- Must always be a minority i.e. less than 40% of Board
- Maximum 2 year appointments

BOARD COMPOSITION

Problem



- Independence should be balanced with industry with knowledge and skills
- **TREASURY PROPOSAL:**
 - Result in only 1 out of 10 Board members with industry experience
 - Zero Board Members with current industry knowledge
- No compulsion on Minister to fill vacancies timeously or within specified time period

BOARD COMPOSITION

RECOMMENDATION

- Retain the 40% maximum auditors requirement (i.e. minority of Board) to ensure a **balance between industry and independence**
- Amend proposal to include **registered auditors that don't attest** who have less of an independence concern and conflict
- Allow for minimum 1 **currently registered attesting auditor** to ensure Board is aware of current matters in audit environment
- **Board Chairperson** may not be an auditor
- Compel Minister to **fill vacancies** within specified time period

DISCIPLINARY COMMITTEE

Status Quo



- Limited guidance on roles, responsibilities and administrative powers
- Disciplinary committee conducts hearings directly
- Chaired by retired Judge or senior Advocate

DISCIPLINARY COMMITTEE

Problem



- Role changes as disciplinary committee is now a panel of members from whom a disciplinary committee is selected
- Reduction of level of legal competence to any advocate or attorney with 10 years experience
- 2/3 of Committee has no specified competence requirements and left to Boards discretion
- IRBA to appoint committee so no independence and perceptions of bias
- Renewable terms contribute to lack of independence

DISCIPLINARY COMMITTEE

RECOMMENDATION

- Retain requirement that Chairperson of Disciplinary Committee (i.e. person who ensures effectiveness of overall process) is still a **retired judge or senior advocate**
- **Prescribe minimum competence** and experience requirements for 2/3 non-auditors and non advocates/attorneys
- **Create independence and reduce perception of bias** by compelling appointment of Committee members by President or Minister such as required in similar positions and remove renewable term
- Create continuity and retention of skills through **7 year single fixed term** and allowing automatic extension of term lapses to **finalise ongoing allocated matters**

SEARCH AND SEIZURE

Status Quo

**COME BACK
WITH A
WARRANT.**

- Disciplinary Committee can compel auditor to produce any information under his control or possession
- **Failure to give evidence** as witness without sufficient cause or **giving false evidence**
- Offence with 5 year imprisonment
- No known criminal cases against auditors by IRBA under this provision

SEARCH AND SEIZURE

Problem

- Proposed search and seizure **overly broad** and falls outside current **constitutional requirements**
- **Civil authorities** vested with criminal investigative powers policy concern
- No **warrant** application requirements as required by ConCourt
- No procedure to have **warrant set aside**
- **No fair trial, self incrimination protection or evidence separation** when matter becomes criminal
- No procedure **for return of documents** found to be irrelevant to investigation



SEARCH AND SEIZURE

RECOMMENDATION

- Reconsider necessity of this power especially **warrantless searches** and policy of civil authorities with criminal investigative powers
- **Align search and seizure provisions** to ConCourt judgements and other legislation in 9 areas identified
- Align **warrant conditions** to minimum requirements as per ConCourt
- **Criminalise abuse** of provision similar to CPA

TECHNICAL MATTERS

ENFORCEMENT COMMITTEE

Challenges and recommendation

- New subcommittee not listed as Board committee in section 20(2)
- Section 24B section heading should be **Enforcement Committee**
- No roles and responsibilities stated in section 24B and conflicting process flows
- No administrative matters stated as in other committee sections
- Duplication of roles for initial “discovery” and investigation by both Board and committee
- Investigating committee should determine if matter appropriate for referral as non-audit matter

REPORTABLE IRREGULARITIES

Challenges and recommendations

- Currently proposal for preventing removal of auditor not overriding other legislation like Companies Act
- Unclear under what circumstance an individual will remove auditor
- Resignation does not seem to be addressed just removal
- No legal, financial or liability protection for auditor who for ethical reasons wants to resign but is prohibited to resign and suffers negative implications, including financial loss (clients remove due to perception), mass action or media harassment.

RIGHT TO OBJECTION

Challenges and recommendations

- No **Administrative Justice** protections to **include internal objection procedure** for auditor against administrative decisions
- Compels use of only **High Court review process** which can be costly for both IRBA and the Auditor

QUESTIONS?