DRAFT PROPOSED IRBA DISCIPLINARY RULES

ISSUED IN TERMS OF SECTION 10(1) OF THE AUDITING PROFESSION ACT 26 OF 2005, AS AMENDED

The Board now resolves under section 10(1) of the Auditing Profession Act, 26 of 2005, as amended by Act 2 of 2015 and Act 5 of 2021, ("the Act") read with section 4(1)(a)(i), (ii) and (iii) of the Act to:

(a) repeal the Disciplinary Rules adopted on 7 June 2007; and

(b) prescribe the following Disciplinary Rules, with effect from **dd/mm/yy**:

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1. Definitions

(1) For the purpose of these Rules, unless otherwise expressly indicated, the following words used in the Rules bear the meaning ascribed to them herein below:

"A person apparently in control of the premises" in respect of business premises means an owner, director, partner, a manager or person in the management team of the business where the search and seizure is to be performed, and in respect of private dwellings means the owner of the premises or a person in occupation of the premises and who is 16 years or older and appears to be responsible for the premises

"Act" means the Auditing Profession Act, 26 of 2005, as amended;

"Accreditation" means the status afforded to a professional body in accordance with Part 1 of Chapter III of the Act, which status may be granted in full or in part

"Accredited Professional Body" means the relevant professional body accredited by the IRBA in terms of section 32(2) of the Act;

"Audit" means the examination of, in accordance with prescribed or applicable auditing standards -

(a) financial statements with the objective of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements; or
(b) financial and other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on the financial and other information

"Authorised person" means a suitably qualified person appointed by the Investigating Committee, in terms of Section 48A(1), to conduct a search and seizure in accordance with Section 48A and/or Section 48B of the Act;

"Board" means the governance structure appointed in terms of section 11, read together with section 12 of the Act;

"CEO" means the person appointed by the Board as Chief Executive Officer under section 9(a) of the Act or any person acting in that capacity;

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"Chairperson of the Disciplinary Committee" means the retired judge or senior counsel appointed by the Board as Chairperson of the Disciplinary Committee in terms of section 24A(4) of the Act;

"Chairperson of the Panel" means the person appointed by the Chairperson of the Disciplinary Committee in terms of section 24A(7)(a) of the Act, to chair a hearing convened in terms of sections 50 and/or 51B of the Act;

"Cleared personnel" means persons whose access to information or documents has been authorised, in writing, by the IRBA Director Investigations.

"Certificate of authority" means a certificate issued by the Investigating Committee Chairperson giving the authorised person permission to enter the premises, for the purpose of conducting a search and seizure.

"Director: Investigations" means the person designated as such, who is an employee of the IRBA, or any person acting in that capacity or any other person appointed or delegated to perform the functions of the *Director: Investigations* as contemplated in these Rules;

"Director: Legal" means the person designated as such, who is an employee of the IRBA, or any person acting in that capacity or any other person appointed or delegated to perform the functions of the *Director: Legal* as contemplated in these Rules;

"Disciplinary Committee" means the committee established by the Board under section 20(2)(f) of the Act, read together with section 24A of the Act;

"Documents" means any physical and electronic documents or tape recordings, including but not limited to data and data messages;

"Enforcement Committee" means a subcommittee of the Board established by the Board in terms of section 24B of the Act;

"Firm" means a partnership, company or sole proprietor referred to in section 38 of the Act;

"*Hearing*" means a disciplinary hearing in terms of section 50 and/or 51B of the Act;

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"IRBA" means the Independent Regulatory Board for Auditors established in terms of section 3 of the Act;

"Identification document" means an identity document or card issued by the South African Home Affairs Department or a valid passport or valid driver's license;

"Investigation" means an investigation into allegation/s of improper conduct initiated by the IRBA against a registered auditor, in terms of Section 48 of the Act;

"Investigating Committee" means the committee established by the Board under section 20(2)(e) of the Act, read together with section 24 of the Act;

"Investigations Department" means the IRBA department entrusted with the receipt and investigation of complaints of improper conduct against registered auditors.

"Non-audit complaint" means a complaint of improper conduct brought against a registered auditor that does not meet the definition of audit under section 1 of the Act;

"Ordinary business hours" means 08h00 to 17h00, Monday to Friday, excluding public holidays.

"Panel" means the disciplinary hearing panel constituted in terms of section 24A(6) of the Act for the purpose of hearing evidence, and deciding, on the charges of improper conduct brought against a registered auditor and where applicable, imposing sanctions on a registered auditor found guilty of improper conduct;

"Party" means the respondent, his/her representative, or the IRBA and its appointed pro forma complainant, (Parties has the corresponding meaning)

"Premises" means the building identified in the certificate of authority or warrant in respect of which a search and seizure is to be conducted.

"professional body" means a body of, or representing,

(a) registered auditors and registered candidate auditors; or

(b) accountants, registered auditors and registered candidate auditors

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"Pro forma complainant" means the person appointed under section 50(1)(b) of the Act to present the charge to the Panel;

"Reasonable force" means the minimum amount of force necessary to gain access to the premises or relevant information, or necessary to overcome any means employed to prevent access to the premises.

"Registered auditor" means an individual or firm registered as an auditor or candidate auditor with the IRBA or who was so registered at the time that the alleged improper conduct took place, whether that registered auditor is or was in public practice or not, and includes the duly authorised representative of the registered auditor if the registered auditor concerned is a firm;

"Relevant documentation/information" means documents or information reasonably considered to be relevant to an ongoing investigation or disciplinary hearing.

"Respondent" means a registered auditor whose conduct is the subject of any proceedings (of whatsoever nature, including a complaint, investigation and/or disciplinary hearing) under these Rules as well as the legal representative of such a registered auditor, if any; and

"*Rules*" means these Disciplinary Rules as prescribed under section 10(1) of the Act and includes these definitions;

"SAPS" means the South African Police Service;

"Search" means A process of carefully and thoroughly looking through items, information and/or documentation that may be relevant to an investigation of improper conduct;

"Seizure" means the act of taking possession of a document or item, and the subsequent retention of same;

"Suitably qualified person" means a person who has professional qualifications, training, skills or experience relevant to the investigation and/or the performance of search and seizures and can give authoritative assessment, advice and/or analysis on information relative to the investigation or the performance of a search and seizure using the relevant

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protocols, standards, methods, or literature and includes any person appointed as an investigator by the IRBA;

"Warrant" means A document issued by a Judge or Magistrate of a court of competent jurisdiction and authorising a search and seizure in terms of section 48B.

(2) Any reference to a "section" in these Rules is a reference to a section of the Act;

(3) Any term in these Rules which is defined in the Act, unless the context indicates the contrary, bears the meaning ascribed to it in the Act;

(4) Unless the contrary intention appears, words importing the masculine gender include females and, words in the singular number include the plural;

(5) These Rules shall, be construed in conformity with the Act; and

(6) Headings, and any footnotes, in these Rules shall be taken into account in the interpretation of these Rules.

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PART A: INVESTIGATION PROCESSES

2. Receipt of a complaint or allegation of improper conduct

(1) If a complaint or allegation of improper conduct against a registered auditor comes to the attention of the Director: Investigations or the CEO, he must refer it to the Investigating Committee if –

(a) the allegations are in the public domain and he, on reasonable grounds, suspects that a respondent has committed an act which may render such respondent guilty of improper conduct; or

(b) the allegations are referred by the Inspection Committee established under section 20(2)(d); or

(c) the allegations pertain to an audit complaint against a registered auditor referred to the IRBA by an Accredited Professional Body; or

(d) a court or appropriate regulator sends (or directs to be sent) a record or report under section 48(2); or

(e) a member of the public lodges a complaint and he:

(i) establishes that the person or firm complained about is/was a registered auditor at the time of the alleged improper conduct;

(ii) establishes that the complaint falls within the jurisdiction of the IRBA; and

(iii) is of the opinion that the complaint of improper conduct appears to be justified.

(2) Members of the public who wish to lodge a complaint of improper conduct against a registered auditor shall do so on affidavit, unless the Director: Investigations or the CEO decides otherwise.

(3) A complaint lodged in terms of sub-rule (2) shall set out clearly and concisely the specific conduct, whether it be acts and/or omissions, giving rise to the complaint of improper conduct and must be accompanied by relevant supporting documentation.

(4) Despite sub-rule (1), if the complaint received is a non-audit complaint, the Director: Investigations or the CEO may cause the complaint received to be referred to an Accredited Professional Body, for investigation and disciplinary proceedings, in accordance with section 48(1A) read with Part E of these Rules.

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3. Investigation of a complaint or allegation of improper conduct

(1) Upon establishing, in terms of Rule 2(1), that there are grounds for referral of a complaint or allegation to the Investigating Committee, the Director: Investigations or the CEO must:

(a) cause an investigation to be conducted in terms of section 48;

(b) notify the respondent in writing of the nature of the complaint and call upon that respondent to furnish a written explanation in answer to the complaint no later than 30 days from the date of service of such notice; and

(c) correspond with any other party, in respect of the matter, as he/she considers appropriate.

(2) In conducting an investigation in terms of sub-rule (1) the Director: Investigations or the CEO may:

(a) take any steps he considers necessary to gather any information relevant to the complaint or allegation under investigation, including:

(i) Requesting disclosure of any relevant objects, documents or information, under the control or custody of any person, including the Respondent or complainant or any other person with specific knowledge of the matter under investigation;

(ii) Issuing a subpoena, in terms of Rule 27, calling upon any person to produce any relevant object, document or information under their control or custody; and/or

(iii) Preparing a formal request to the Investigating Committee for authority to conduct a search and seizure process as contemplated in section 48A or 48B.

(b) Employ any means he considers necessary for the proper and expeditious investigation of the complaint or allegation.

(3) The Director: Investigations or the CEO must, on an annual basis, compile a list of complaints scheduled for investigation in the relevant year and allocate

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such compliants to available investigators for investigation, taking into account the independence and experience of the investigators..

(4) During the period of the investigation, the registered auditor and the complainant must be provided with bi-annual written communication of the status of the investigation.

(5) The Director: Investigations or the CEO must cause investigations to be completed as soon as practically possible, subject to the availability of investigators, the complexity of the complaint and the cooperation of the parties involved.

(6) On conclusion of the process of investigating the complaint or allegation of improper conduct, the Director: Investigations or the CEO must table the matter before the Investigating Committee for consideration.

(7) If having considered a matter tabled before it in terms of sub-rule (6), the Investigating Committee requires further information on the matter, then it must direct the Director: Investigations or the CEO to conduct a further investigation on the matter, the outcomes of which, must be re-tabled at any subsequent Investigating Committee meeting for consideration.

4. Outcome of the investigation and recommendations to the Enforcement Committee

(1) Prior to making a recommendation to the Enforcement Committee, and in circumstances where the Investigating Committee intends to recommend that the Respondent be charged with improper conduct, the Investigating Committee will engage in the process of preparaing a draft charge sheet and offer the Respondent an opportunity to make submissions on factual inaccuracies in the draft charge sheet, if any.

(2) Any submissions made in terms of sub-rule (1) shall be filed no later than 30 days from the date of request for submissions and must be supported by documentary evidence not previously provided to the Investigating Committee.

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(3) On receipt of submissions made in terms of sub-rule (2), the Investigating Committee shall consider the submissions and determine, in its sole discretion, whether changes to the draft charge sheet should be effected.

(4) Thereafter, the Investigating Committee shall report and recommend to the Enforcement Committee whether the Respondent should be charged with improper conduct.

(5) If the Investigating Committee recommends to the Enforcement Committee that the respondent should not be charged with improper conduct, it should state its finding as to whether:

(a) the respondent is not guilty of improper conduct; or

(b) there is a reasonable explanation for the respondent's conduct; or

(c) the conduct of which the respondent may be guilty of is not qualitatively or quantitatively material; or

(d) there are no reasonable prospects of succeeding with a charge of improper conduct against the respondent.

(6) If the Investigating Committee recommends to the Enforcement Committee that the respondent should be charged with improper conduct, it must make a recommendation on:

(a) the charges which should be preferred against the respondent;

(b) whether the matter should follow an admission of guilt process in terms of sections 49(1)(a) and 51; or

(c) whether the matter should be referred to the Disciplinary Committee for determination in terms of sections 50 and 51B.

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5. Decision on whether or not to charge a respondent with improper conduct and request for a plea

(1) When the Enforcement Committee receives a recommendation under Rule 4(4) read together with Rule 4(5), recommending that the respondent should not be charged with improper conduct, it shall consider the recommendation and may elect not to charge the respondent.

(2) If the Enforcement Committee decides not to charge a respondent whose conduct was the subject of an investigation, the Director: Investigations or the CEO shall notify the respondent, and the complainant, if applicable, in writing of this decision.

(3) If the Enforcement Committee having considered the recommendation of the Investigating Committee under Rule 4(4) read together with Rule 4(6), decides to charge the respondent with improper conduct, the Enforcement Committee shall cause the Director: Investigations or the CEO to:

(a) send the respondent a notification of the decision to charge the respondent; and

(b) serve the charge sheet on the respondent together with a request for a plea in terms of Section 49(3).

(4) On receipt of the charge sheet and a request for a plea, the respondent shall prepare a plea to all the charges contained in the charge sheet, which plea must:

(a) Deny any or all of the charges; or

(b) Admit any or all of the charges;

(5) A plea referred to in sub-rule (4)(a) must be supported by a written explanation from the respondent regarding the improper conduct with which the respondent is charged.

(6) If the respondent admits guilt to any or all of the charges, the respondent is considered to have been found guilty as charged.

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(7) Where the respondent pleads guilty to all the charges, the respondent must submit, together with the plea, a signed copy of the charge sheet, as well as factors in mitigation of a sanction.

(8) The respondent must submit a plea, together with any written explanation and/or mitigating factors no later than 30 days from the date of the request for a plea.

(9) If the respondent does not submit a plea within the said 30 days, the respondent will be deemed to have denied the charges and entered a plea of not guilty.

(10) The Director: Investigations or the CEO shall, on receipt of the plea, together with any written explanation and/or mitigating factors or on expiry of the period within which the plea was due to be filed, table the matter, together with all documents received before the Enforcement Committee for consideration.

(11) Having considered the matter, together with the recommendation from the Investigating Committee, any plea, written explanation and/or mitigating factors tabled before it, the Enforcement Committee shall:

(a) If the respondent pleaded guilty to all the charges preferred, decide whether to follow an admission of guilt process as set out in sections 49(1)(a) and 51, and if it decides to follow an admission of guilt process:

(i) determine the appropriate sanction to be imposed in terms of section 51; and

(ii) cause the Director: Investigations or the CEO to effect the decision and send written notification of the decision to the respondent and the complainant, if applicable.

(b) Decide to refer the matter to the Disciplinary Committee for a disciplinary hearing in terms of sections 50 and/or 51B, read together with Rules 19 and/or 20, if:

(i) the respondent pleaded guilty to all the charges preferred but the Enforcement Committee decided not to follow an admission of guilt process; or

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(ii) the respondent denies any or all of the charges preferred or failed to plead as required.

(12) Notwithstanding anything to the contrary contained in this Rule, the Enforcement Committee may, on recommendation by the Director: Investigations or the CEO, on the basis that the plea raises new defences, refer the matter back to the Investigating Committee for consideration of the charge sheet against the plea filed under this Rule, in which case, the process set out in Rules 4 and 5 shall follow, with the necessary changes.

(13) In the event that the Enforcement Committee decides in terms of sub-rule (11)(a), the Director: Investigations or the CEO shall:

(a) Notify the respondent of the Enforcement Committee decision and impose the sanction as determined by the Enforcement Committee in terms of section 51; and

(b) Where, applicable, send written notification to the complainant informing him/her of the outcome of the matter.

(14) In the event that the Enforcement Committee decides in terms of sub-rule (11)(b), the Director: Investigations or the CEO shall:

(a) cause the matter to be referred to the Director: Legal or the CEO for referral to the Disciplinary Committee; and

(b) send written notification of the decision to the respondent and the complainant, if applicable.

(15) Notwithstanding anything to the contrary contained in this Rule, where the Enforcement Committee disagrees with the recommendation of the Investigating Committee, it shall refer the matter back to the Investigating Committee, together with its reasons, for reconsideration and/or further investigation.

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PART B: DISCIPLINARY HEARING PROCESSES

6. General Matters

(1) The Panel may upon good cause shown and in the interests of justice, condone any departure from these Rules on condition that such departure is not prohibited by the Act.

(2) Unless a departure from these Rules is raised at a hearing, it shall not be necessary for the Panel to formally condone such departure and such departure shall not invalidate any action or decision taken, or purportedly taken, under these Rules.

(3) The Disciplinary Committee or Panel are not bound by the strict rules of evidence applicable to Courts in their administrative decision-making process.

(4) Should the matter be referred to the Disciplinary Committee in terms of Rule 5(11)(b) the Director: Legal or the CEO shall cause the matter to be referred for a merits or a sanction hearing in terms of Rule 19 or 20, depending on the circumstances.

(5) Pursuant to a referral to a merits or a sanction hearing, the Director: Legal or the CEO shall appoint the *pro forma* complainant, in his discretion, to present the charge(s), alternatively the submission in aggravation of the sanction(s), to the Panel at the hearing.

(6) The *pro forma* complainant appointed in terms of sub-rule (5) may be assisted by one or more persons with legal or auditing experience.

(7) Any witness at a hearing under Rules 19 and 20 shall only give evidence after the Chairperson of the Panel has administered an oath or affirmation to such witness.

(8) Should the respondent not be present at the date, place and time scheduled for the hearing in terms of Rules 19 and 20 and still not be present within thirty (30) minutes from the time set for the start of the hearing, the hearing may proceed in the respondent's absence if the Panel is satisfied that the notice of set down was duly served on the respondent.

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(9) The respondent shall be present in attendance at all sittings of the hearing, unless excused by the Panel. If the respondent is not present at a hearing, the respondent may only be represented by another person duly authorised as such in writing.

(10) The provisions of Rules 19 and 20 shall apply with the necessary changes to the situation where a hearing proceeds in a respondent's absence.

(11) The Panel may regulate its proceedings under Rules 19 and 20 or any part thereof, as it deems appropriate and in the interests of justice.

(12) In exercising any of its powers and performing its functions, the Panel may act in such a manner as it deems expedient in the circumstances, to achieve the objects of the Act. In doing so, it shall have regard to substance rather than form.

7. Amendment of charge sheet prior to hearing

(1) The Enforcement Committee may at any time after a charge sheet or amended charge sheet was furnished to a respondent in terms of Rule 5(3), and before the commencement of a hearing under Rule 19, amend such charge sheet.

(2) Amendments effected under sub-rule (1) may include but are not limited to errors in formulation or articulation, as well as the addition or deletion of charges.

(3) The amendments shall be effected by furnishing an amended charge sheet to the respondent.

(4) The provisions of Rule 5 (4) – (8) apply with the necessary changes to a respondent after receipt of an amended charge sheet, even if the respondent has pleaded to the original charge sheet, except that the amended plea must be filed within 10 days of receipt of the amended charge sheet.

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8. Powers of the Chairperson of the Disciplinary Committee

(1) The Chairperson of the Disciplinary Committee has the duty to:

(a) Appoint members of a Panel, inclusive of a Chairperson of such Panel as contemplated in section 24A(6), read together with subsection (7); and

(b) monitor consistency in the application of disciplinary rules by the Panels convened in terms of section 24A(6), which shall include assessing:

(i) the consistency of the hearing processes with these Rules; and

(ii) the consistency of the decisions and rulings of the Panel with the Act, the Rules and previous decisions of the Disciplinary Committee / or Panels;

(2) Notwithstanding sub-rule (1)(b), the Chairperson of the Disciplinary Committee may not impose a decision or ruling on the Panel, neither may he amend the decision or ruling of the Panel on any matter. The Chairperson of the Disciplinary Committee shall only assume an advisory role in respect of such decisions or rulings.

(3) The Chairperson of the Disciplinary Committee has the power to consider and determine:

(a) any application for a subpoena in terms of Rule 27(1)(c);

(b) requests for postponement in terms of Rule 13, provided that such request is filed prior to the date on which the matter is scheduled for hearing; and

(c) Preliminary, jurisdictional and interlocutory applications filed prior to the appointment of a Panel.

(4) Notwithstanding sub-rule (3), nothing prevents the Chairperson of the Disciplinary Committee from constituting a Panel for the purpose of considering applications made in terms of sub-rule (3)(c) or deferring any such application to the Panel which will be appointed to determine the matter, where in the Chairperson's view, it would be in the interest of justice to do so.

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9. Notification of the hearing

(1) On receipt of the referral of the matter to the Disciplinary Committee as contemplated in Rule 5(14) and accompanying documents, the Director: Legal or CEO shall schedule the matter so referred for a hearing under Rules 19 or 20, and cause a notice of set down to be served on the respondent.

(2) The notice of set down referred to in sub-rule (1) shall include:

(a) the details of the parties;

(b) the nature of the hearing (whether it is a merits or sanction hearing);

(c) the date, time and place at which a hearing will take place;

(d) the charge(s) which will be placed before the Panel for determination and/or in respect of which a sanction must be determined;

(e) the rights of the respondent as set out in section 50(11), read together with Rule 19(1) and Rule 20(7);

(f) the right of the respondent to request a subpoena to be issued in respect of any witness;

(g) the right of the respondent to change his/her plea in terms of Rule 19(3) from a plea of not guilty to a plea of guilty and the effects of such a change; and

(h) the consequences of the failure to attend the hearing as per Rule 6(8).

(3) The notice of set down must be served at least 30 days before the hearing unless the parties agree to a shorter period.

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10. Pre-hearing conference

(1) The parties to a hearing must hold a pre-hearing conference dealing with the matters referred to in sub-rule (3), if:

(a) the hearing scheduled is in terms of Rule 19 and the respondent is represented by a legal practitioner; or

(b) both parties agree to hold a pre-hearing conference; or

(c) the Chairperson of the Disciplinary Committee or Panel directs the parties to hold a pre-hearing conference.

(2) A pre-hearing conference convened in terms of sub-rule (1)(a) and (b) must be convened no less than 14 days prior to the date scheduled for the hearing and at the instance of either party.

(3) At a pre-hearing conference, the parties must attempt to reach an agreement on the following -

(a) amendments to the charge(s) preferred and/or the respondent's plea thereto;

(b) facts that are agreed and those that remain in dispute;

(c) the issues that the Panel is required to decide on;

(d) the exchange of relevant documents;

(e) the preparation of a bundle of documents;

(f) the status of documentary evidence or any part thereof, as well as the manner in which documentary evidence is to be dealt with, including whether:

(i) The documents are what they purport to be without the need to lead evidence to authenticate them;

(ii) The truthfulness of the contents of any document is admitted without the need to lead evidence thereon;

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(iii) Any document which purports to have been created by its author shall be regarded as having been so created;

(iv) A document which purports to have been sent and received shall be regarded as having been sent by its author and received by the addressee reflected therein; and/or

(v) Copies of documents may be used without the need to produce the originals.

(g) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the affidavit;

(h) preliminary points that are intended to be taken;

(i) witness lists and issues in respect of which each witness will testify, as well as the required time for each witness;

(j) the exchange of witness statements;

(k) whether expert evidence will be led and if so, whether an expert report or statement is to be provided;

(l) if the conference relates to a sanction hearing, agreement on what appropriate sanctions may be imposed by the Panel;

(m) any other means by which the proceedings may be shortened; and

(n) an overall estimate of the time required for the hearing.

(4) The deliberations at a pre-hearing conference shall be recorded in the form of a pre-hearing minute and shall be signed by the parties or their representatives, which minute shall form part of the bundle of documents to be adduced in evidence.

(5) The Chairperson of the Panel, may, after receiving the pre-hearing minute -

(a) direct the parties to hold a further pre-hearing conference; and / or

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(b) issue any other directive to the parties concerning the conduct of the hearing, inclusive of the scope of the evidence to be lead in respect of the issues remaining in dispute.

(6) A pre-hearing conference convened in terms of this Rule shall be attended by at least one representative of either party who shall be deemed to be duly authorised to attend, make binding decisions and sign the minute as evidence of such decisions

(7) Despite non-compliance with the provisions of this Rule, the Chairperson of the Panel may, in his/her discretion, continue with the hearing. However, any non-compliance may be taken into account when considering a costs order at the conclusion of the hearing.

11. Disclosure of documents and bundles of documents to be adduced in evidence

(1) At any time after receipt of the notice of set down as per Rule 9(1), but not less than 14 days prior to the hearing date, either party may request the other party to disclose any documents relevant to the matter.

(2) The party to whom the request in terms of sub-rule (1) is made, must disclose the requested documents within 5 days from the date on which the request was received.

(3) A Chairperson of the Panel may, either before or during the proceedings, on his own accord, or on application, make an order as to the disclosure of relevant documents or any other evidence.

(4) Despite sub-rule (1),(2) and (3), the parties may agree on the disclosure of documents or any other evidence, provided that:

(a) the *pro forma* complainant and/or Director: Legal shall, no later than 20 days before the scheduled hearing, compile and index a bundle of documents intended to be used in evidence at the hearing and cause same to be transmitted to the respondent;

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(b) The respondent, shall, no later than 5 days from the date of receipt of the bundle referred to in sub-rule (4)(a) submit to the *pro forma* complainant or the Director: Legal:

(i) an indication of which documents the respondent admits are what they purport to be;

(ii) an indication of documents in respect of which the content, authenticity and/or truthfulness is disputed, in which case the respondent must provide the grounds on which such documents are disputed.

(iii) an indexed bundle of documents which the respondent intends to use in evidence at the hearing;

(c) The *pro forma* complainant shall, within 5 days of receipt of the respondent's indexed bundle of documents, submit to the respondent an indication of which documents:

(i) are admitted as being what they purport to be; and

(ii) in respect of which the content, authenticity and/or truthfulness is disputed, in which case the *pro forma* complainant must also provide the grounds on which such documents are disputed.

(d) The Director: Legal or the CEO shall, no later than 7 days prior to the date of the scheduled hearing, compile and cause the following bundles of documents to be adduced in evidence at the hearing to be distributed to the members of the Panel appointed to hear the matter; the respondent; and the *pro forma* complainant:

(i) a bundle of agreed documents, containing documents that are admitted as being what they purport to be

(ii) a bundle of documents in respect of which the content, authenticity and/or truthfulness is disputed; and

(iii) where applicable, a bundle of witness statements and expert joint minutes.

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(5) The bundle of documents referred to in sub-rule (4)(d) shall, at least, comprise of the following documents:

(a) the charge sheet(s) served on the respondent in terms of Rule 5(3) and/or Rule 7;

(b) any plea(s), written explanation(s) or mitigating factors furnished by the respondent in terms of Rule 5(8) and/or Rule 7;

(c) the notice of set down issued in terms of Rule 9;

(d) any documents intended to be used in evidence by either party; whether agreed to or disputed;

(e) at the discretion of the *pro forma* complainant, a certified copy of the record of the trial and conviction of the respondent, if the respondent is charged with improper conduct which amounts to the offence of which the respondent was convicted, unless the conviction has been set aside by a superior court; and

(f) a pre-hearing conference minute, if any.

(6) If a document is contained in the undisputed bundle, a party may not later dispute the document unless they give notice of the intention to dispute it as well as the grounds for disputing it.

(7) Disputes raised in relation to the documents contained in the disputed bundle shall be dealt with by the Chairperson of the Panel, following receipt of submissions from the parties.

(8) Nothing in this Rule shall prevent any evidence not included in any bundle referred to in sub-rule (4) and (5) from being adduced at the hearing.

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12. Witnesses

(1) A party intending to call a witness shall give notice in writing thereof to the other party no less than 14 days prior to the hearing.

(2) The Chairperson of the Disciplinary Committee or Panel, may if he/she considers it in the interest of the expeditious finalisation of the matter, direct the parties to file witness or expert witness statements within a period directed by him/her, which statements must include:

(a) the proposed evidence of such witness,

(b) reference to documents on which the witness will rely during evidence; and

(c) if the witness is an expert, the basis on which the witness is regarded to be an expert.

(3) Notwithstanding sub-rule (2) above, the parties may agree to exchange and file witness statements prior to the hearing, in which case, the statements must be filed with the Panel no later than 7 days prior to the date of the scheduled hearing.

(4) Where the parties have been directed or have agreed to file expert witness statements in terms of sub-rule (2) or (3) and there are opposing expert witness statements, a joint minute should be prepared by the respective experts, in which it is recorded where the experts have been able to reach agreement on the issues in respect of which they provide expert evidence and to identify the issues where agreement cannot be reached.

(5) The joint minute referred to in sub-rule(4) shall be signed by the relevant experts and contained in a separate bundle filled with the Panel and all relevant parties in terms of Rule 10(4).

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13. Interlocutory applications / motion proceedings

(1) This Rule applies to any -

(a) application for condonation, consolidation or postponement;

(b) application in relation to a jurisdictional dispute; and

(c) any other interlocutory applications.

(2) An application in terms of this Rule must be brought at least 14 days prior to the date of the hearing and on notice to the other party and any other persons with an interest in the application.

(3) The party bringing the application must sign the notice, which must state the following:

(a) the parties to the matter;

(b) the reference number assigned to the matter by the IRBA;

(c) the relief sought;

(d) the address at which the party delivering the document will accept delivery of all documents in the proceedings;

(e) that any party that intends to oppose the application must deliver a notice of opposition and answering affidavit within 5 days after the application has been delivered to it;

(f) that the application may be heard in the absence of submissions from any party that does not comply with sub-rule (3)(e); and

(g) that a schedule is included listing the documents that are material.

(4) The application must be supported by an affidavit, which affidavit must clearly and concisely set out:

(a) the names, description and addresses of the parties;

(b) the details of a party deposing to the affidavit;

(c) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;

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(d) a statement of legal issues that arises from the material facts, in sufficient detail to enable any party to reply to the document; and

(e) if the application is filed outside the relevant time period, grounds for condonation for non-compliance with sub-rule (2).

(5) Any party opposing the application may deliver a notice of opposition and an answering affidavit within 5 days from the day on which the application was served on that party.

(6) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by sub-rules (3) and (4) respectively.

(7) The party initiating the proceedings may deliver a replying affidavit within 3 days from the day on which any notice of opposition and answering affidavit are served on it.

(8) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.

(9) The Chairperson of the Disciplinary Committee will consider the application filed under this rule based on the papers filed by the parties and without oral arguments, unless the Chairperson, in his/her sole discretion, determines that the presentation of facts and/or legal arguments in the record and the decision process would be significantly aided by oral argument.

(10) Despite this Rule, the Chairperson of the Disciplinary Committee may determine an application in any manner he/she deems fit, provided that the Chairperson of the Disciplinary Committee informs the parties of how the process will be conducted and gives the parties an opportunity to be heard.

(11) Subject to sub-rule (4)(f), nothing in this rule prevents a party to the proceedings from filing an application in terms of sub-rule (1) outside the timelines set out in sub-rule (2) or at the date scheduled for the hearing, if the issue necessitating the application only arose or came to the attention of the party at such later date.

(12) Notwithstanding anything to the contrary set out herein above, and/or in Rules 19 and 20, the parties may, after referral of a matter to the Disciplinary

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Committee in terms of Rule 5(11)(b) and by agreement between themselves, request the Chairperson of the Disciplinary Committee to allocate the matter to the Panel for determination in terms of this Rule, provided that:

(a) neither of the parties intend to call witnesses; or

(b) while the parties intend to present evidence of witnesses, they have agreed to do so by way of affidavit and waived their right to cross examine such witnesses.and

(c) the Chairperson of the Disciplinary Committee believes that the matter may appropriately be determined without oral evidence.

(13) Should the Chairperson of the Disciplinary Committee agree to the request in terms of sub-rule (12), he/she shall in addition to affidavits filed under sub-rule (4), (5) and (7), direct the parties to file their heads of arguments on the matter within 5 days of receipt of a reply contemplated in sub-rule (7) or from the date on which such reply was due.

(14) On receipt of all relevant papers, the Chairperson of the Disciplinary Committee shall constitute a Panel as contemplated in Rule 8(1)(a) to determine the matter.

(15) The Panel may, on receipt of the matter, direct the parties to deliver oral arguments at a date and place determined by the Panel.

14. Jurisdictional points

(1) Jurisdictional points must be raised in terms of Rule 13 or, in the case of non-compliance with Rule 13(2) and subject to Rule 13(4)(e), at the commencement of the merits hearing and prior to the pro forma complainant stating his/her case in terms of Rule 19. Failure to raise a jurisdictional point in accordance with this sub-rule amounts to consent to jurisdiction.

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15. Settlement engagements

(1) The parties may, at any time after the decision has been made to refer a matter to the Disciplinary Committee in terms of Rule 5(11)(b) but prior to the conclusion of a disciplinary hearing, engage on possible settlement of the matter, provided that any settlement proposal advanced following such engagements is deferred for consideration and approval by:

(a) the Enforcement Committee, where a panel has not yet been convened for the purpose of a hearing and the matter has not yet been scheduled for hearing; or

(b) the Panel, where it has already been convened and the matter is scheduled for a hearing.

(2) Any settlement proposal approved in terms of sub-rule (1)(a) and/or (b) becomes a sanction imposed by the Enforcement Committee or the Panel, as the case may be, and shall be enforced accordingly.

16. Stated case

(1) Notwithstanding anything to the contrary set out in Rules 19 and 20, the parties may, after referral of a matter to the Disciplinary Committee by the Enforcement Committee in terms of Rules 5(11)(b) agree to refer a stated case on any point of law, for adjudication by the Panel.

(2) A stated case shall be referred by filing an agreed statement with the Panel, setting out the following information:

(a) facts agreed upon, and

(b) the question(s) of law in dispute between the parties and their contentions thereon.

(3) The statement referred to in sub-rule (2), shall be supported by copies of documents necessary to enable the Panel to decide upon such question(s) and shall be signed by the parties or their representatives.

(4) A stated case shall be set down for hearing as if it were an opposed applications governed by Rules 13(9) and 13(10), provided that the

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Chairperson of the Panel, may direct the parties to deliver oral arguments at the date, time and place determined by the Panel.

(5) Notwithstanding the absence of an agreement in terms of sub-rule (1), the Chairperson of the Disciplinary Committee or the Panel may, where he determines that the matter before the Panel is one of a point of law and requires no consideration of factual disputes, direct that the matter will be determined by way of a stated case.

17. Public and private hearings

(1) The proceedings under Rules 19 and 20 are open to the public, except where the Chairperson of the Panel on his own accord or on application by any of the parties, directs that any part of the hearing must be held in camera.

(2) Any application for any part of the hearing under Rules 19 and 20 to be held in camera shall be brought in terms of Rule 13.

(3) Despite sub-rule (1) documents forming part of the record of the proceedings do not constitute public records unless the Chairperson of the Panel determines otherwise.

(4) An application for access to documents which form part of the record of the proceedings should be brought in terms of Rule 13.

18. Recording of hearing proceedings

(1) The Panel must ensure that all proceedings are recorded.

(2) The record must be kept by means of a digital recording and/or a transcription thereof.

(3) A party to the proceedings may request a copy of the record or a portion of a record, on payment of the relevant costs, where applicable.

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19. Merits hearing

(1) The order of procedure at a hearing under this Rule shall be as follows:

(a) The Chairperson of the Panel shall read the charge sheet referred to in Rule 5(3) and/or Rule 7 to the respondent, unless the respondent agrees to dispense with the reading of the charge sheet.

(b) The Chairperson of the Panel shall ask the respondent to confirm which of the charge(s) set out in the charge sheet the respondent admits or denies, provided that he shall not ask such confirmation with respect to any charge(s) that the respondent may have admitted in terms of section 49(4).

(c) The respondent will be considered to be guilty of any charge(s) to which such respondent admits guilt under sub-rule (1)(b) and such charge(s) will be referred to a sanction hearing in terms of Rule 20.

(d) Should the respondent not admit or deny the charge(s) when asked to do so under sub-rule (1)(b) or should it appear to the Chairperson of the Panel that the respondent may admit the facts but may not admit the charge(s) or should the respondent not be present at the hearing under this Rule, the respondent will be considered to have denied the charge(s).

(e) The *pro forma* complainant shall state his/her case about the charge(s) denied under sub-rules (1)(b) and/or (d) and produce evidence in support thereof.

(f) The pro forma complainant may lead the evidence of any person who was involved in the investigation that gave rise to the charge(s) against the respondent. That person shall be permitted to give factual and opinion evidence relevant to the charge(s).

(g) The respondent may cross-examine any witnesses produced by the *pro forma* complainant and may have access to any documents adduced in evidence by the *pro forma* complainant.

(h) The *pro forma* complainant may re-examine any witnesses cross-examined by the respondent.

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(i) At the conclusion of the case presented by the *pro forma* complainant, the respondent shall state the case about the charge(s) denied under sub-rules (1)(b) and/or (d) and produce evidence in support thereof.

(j) The *pro forma* complainant may cross-examine any witnesses produced on behalf of the respondent (including the respondent, if the respondent has elected to give evidence) and may have access to any documents adduced in evidence by the respondent.

(k) The respondent may re-examine any witnesses cross-examined by the *pro forma* complainant.

(l) At the conclusion of the case presented by the respondent:

(i) the *pro forma* complainant may address the Panel on the matter generally;

(ii) the respondent may reply to the *pro forma* complainant; and

(iii) the *pro forma* complainant may reply to any new matter raised by the respondent.

(m) The Panel shall not hear any further evidence from the *pro forma* complainant or from the respondent after the conclusion of their case unless the interests of justice so dictates, in which case sub-rule (1)(e) to (l) shall apply with the necessary changes.

(2) The *pro forma* complainant may, at any time after he/she has started to state his/her case and prior to the conclusion of the hearing under this Rule, bring an application to amend the charge sheet in accordance with section 50(2) of the Act.

(3) The respondent may at any time after the *pro forma* complainant has started to state his case and prior to the conclusion of the hearing under this Rule admit guilt to any charge(s) which have not previously been admitted, upon which such respondent will be considered to be guilty of such charge(s) and the charge(s) referred to a sanction hearing under Rule 20.

(4) The *pro forma* complainant may, with the leave of the Panel, at any time after he started to state his/her case and prior to the conclusion of the hearing withdraw any charge(s) against the respondent.

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(5) If the Panel is not seized of any further charge(s) as a result of an admission under sub-rule (3) or a withdrawal under sub-rule (4) and if the respondent is guilty of any charge(s) under Rule 5 (6) or sub-rule (12), the Panel shall proceed in terms of Rule 20.

(6) The Panel may, at any time after the commencement and before the conclusion of the hearing, order the postponement of the remainder of the hearing under this Rule to a time and place determined or to be determined in its discretion, provided that only Panel members present at the commencement of the hearing under this Rule may take part in the remainder of the hearing under this Rule.

(7) The Panel may, at any time after the commencement and before the conclusion of the hearing under this Rule, call as a witness, any person, the evidence of whom it considers material, and who has not been called by the *pro forma* complainant or the respondent. The Panel may regulate its proceedings with respect to the cross-examination of such witness and the right to address the Panel on the evidence given by such witness as it deems fit, in the interests of justice.

(8) Any member of the Panel taking part in the hearing under this Rule may, with the permission of the Chairperson of the Panel, put a question to any witness, the respondent (if such respondent has elected to give evidence), the *pro forma* complainant and/or the legal representative of the respondent (if any).

(9) Where a disciplinary hearing has commenced and it transpires that a member of the Panel for any reason, is unable to complete the proceedings of the disciplinary hearing, the Chairperson of the Disciplinary Committee may, subject to sub-rule (10), direct that the proceedings continue before the remaining Panel members provided that at least two members remain on the panel.

(10) The remaining Panel members under sub-rule (9) must consist of a person with at least 10 years' experience in auditing who was formerly registered as an auditor and an advocate or attorney with at least 10 years' experience in practicing law.

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(11) If there are less than two remaining members on the Panel, the Chairperson of the Disciplinary Committee must constitute a new Panel and direct that the proceedings commence afresh.

(12) At the conclusion of a hearing under this Rule, the Chairperson of the Panel must:

(a) inform the parties of the Panel's findings as to the guilt or innocence of the respondent on the charge(s) preferred against the respondent and in respect of which the respondent pleaded not guilty; or

(b) inform the parties of the date when the Panel will notify the parties in writing of its finding(s) as to the guilt or innocence of the respondent on the charge(s) preferred against the respondent and in respect of which the respondent pleaded not guilty, which date shall not be more than 30 days from the date on which the merits hearing is concluded.

20. Sanction hearing

(1) This Rule does not apply when a respondent admitted guilt to the charge(s) and a sanction was imposed on the respondent under section 51, read together with Rule 5(11)(a).

(2) Subject to sub-rule (1), this Rule applies when a respondent is found guilty of any charge(s) under Rule (5)(11)(b), Rule 19(1)(c), Rule 19(3) and/or Rule 19(12) regardless of whether a hearing under Rule 19 took place.

(3) When a respondent is found guilty of any charge(s) and a hearing under Rule 19 took place, the Panel will conduct a hearing under this Rule:

(a) at the date, time and place appointed by the Chairperson of the Panel, which date shall not be more than 30 days after the Panel's finding in terms of Rule 19(12); and

(b) with only such members of the Panel that took part in the hearing under Rule 19 taking part in the hearing under this Rule.

(4) Notwithstanding sub-rule (3)(b) where one or more members of the Panel who took part in the hearing under Rule 19 is, as a result of removal or resignation from the Disciplinary Committe, unable to reconvene for a

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hearing under this rule, the Chairperson of the Disciplinary Committee may, direct that the proceedings continue before the remaining members, provided that at least the following two members remain:

(a) a person with at least 10 years' experience in auditing who was formerly registered as an auditor and
(b) an advocate or attorney with at least 10 years' experience in practicing law.

(5) Where following a member's removal as contemplated in sub-rule (4), there are less than two remaining members on the Panel or the remaining members do not comply with sub-rule (4)(a) and (b), then the Chairperson of the Disciplinary Committee may reconstitute a Panel for the purpose of a hearing under this Rule.

(6) If a respondent is found guilty of the charge(s) under Rule 5(11)(b)(i) and a hearing did not take place, the Panel shall conduct the hearing under this Rule at such time and place as is determined by the Director: Legal or the CEO under Rule 9.

(7) The order of procedure at a hearing under this Rule shall be as follows:

(a) The Chairperson of the Panel shall read the charge(s) in respect of which the respondent has been found guilty, unless the respondent agrees to dispense with the reading of the charge(s).

(b) The *pro forma* complainant shall state his/her case regarding aggravating circumstances in respect of the sentence to be imposed on the respondent for the charge(s) in respect of which the respondent has been found guilty and produce evidence in support thereof (if any).

(c) The respondent may cross-examine any witnesses led by the *pro forma* complainant and may have access to any documents adduced in evidence by the *pro forma* complainant.

(d) The *pro forma* complainant may re-examine any witnesses cross-examined by the respondent.

(e) At the conclusion of the case presented by the *pro forma* complainant, the respondent shall state the case regarding mitigating circumstances

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in respect of the sentence to be imposed on the respondent for the charge(s) in respect of which the respondent has been found guilty and produce evidence in support thereof (if any).

(f) The *pro forma* complainant may cross-examine any witnesses led on behalf of the respondent (including the respondent if that respondent has elected to give evidence) and may have access to any documents adduced in evidence by the respondent.

(g) The respondent may re-examine any witnesses cross-examined by the *pro forma* complainant.

(h) At the conclusion of the case presented by the respondent:

(i) the *pro forma* complainant may address the Panel with respect to mitigating or aggravating circumstances presented before the Panel;

(ii) the respondent may reply to the *pro forma* complainant; and

(iii) the *pro forma* complainant may reply to any new matter raised by the respondent.

(i) The Panel shall not hear any further evidence from the *pro forma* complainant or from the respondent after the conclusion of their case on mitigating or aggravating circumstances unless the interests of justice so dictate, in which case sub-rule (6)(b) to (h) shall apply with the necessary changes.

(8) The Panel may at any time after the commencement and before the conclusion of the hearing under this Rule order the postponement of the remainder of the hearing under this Rule to a time and place determined or to be determined in its discretion, provided that only members present at the commencement of the hearing under this Rule may take part in the remainder of the hearing under this Rule.

(9) The Panel may at any time after the commencement and before the conclusion of the hearing under this Rule call as a witness any person, the evidence of whom it considers material, and who has not been called by the *pro forma* complainant or the respondent. The Panel may regulate its

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proceedings with respect to the cross-examination of such witness and the right to address the Panel on the evidence given by such witness as it deems fit, in the interests of justice.

(10) Any member of the Panel taking part in the hearing under this Rule may, with the permission of the Chairperson of the Panel, put a question to any witness, to the respondent (if the respondent has elected to give evidence), to the *pro forma* complainant and to the representative of the respondent (if any).

(11) The Panel may make any decision with regard to any matter arising in connection with, or in the course of a hearing under this sub-rule, in camera.

(12) At the conclusion of a hearing under this Rule, the Chairperson of the Panel must:

(a) inform the parties of the Panel's finding as to the sentence which it imposes on the respondent in respect of the charge(s) preferred against the respondent and in respect of which the respondent was found guilty; or

(b) inform the parties of the date when and how the Panel will notify the parties in writing of its finding as to the sentence which it imposes on the respondent in respect of the charge(s) preferred against the respondent and in respect of which the respondent was found guilty, which date shall not be more than 5 days from the date on which the hearing is concluded.

21. Competent sanctions, cost orders and publication

(1) If a respondent is found guilty of all charges of improper conduct preferred, in terms of Rule 5(11)(a) and the matter is not referred to a hearing in terms of Rule 20, the Enforcement Committee may impose one or more of the following sanctions on the respondent:

(a) caution or reprimand the registered auditor;

(b) impose a fine on the registered auditor not exceeding the amount determined by the Minister in the Gazette in terms of section 51(1)(b);

(c) require the registered auditor to attend appropriate training; and/or

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(d) any other relevant non-monetary sanction(s).

(2) If a respondent is found guilty of a charge of improper conduct and a hearing in terms of Rule 20 was convened, then the Panel may impose one or more of the following sanctions on the respondent:

(a) a caution or reprimand;

(b) a fine which shall not exceed the amount determined by the Minister in the Gazette in terms of section 51B(3)(a)(ii);

(c) a requirement for the respondent to attend appropriate training;

(d) any other relevant non-monetary sanction(s);

(e) the cancellation of the registration of the respondent with the IRBA and the removal of the name of the respondent from the register referred to in section 6; and/or

(f) the disqualification of the respondent from registration as a registered auditor on a temporary or permanent basis.

(3) A sanction imposed in terms of sub-rule (1) or (2) may be suspended for a specific period and/or until the occurrence of a specific event or made subject to any conditions.

(4) A respondent upon whom a sanction is imposed in terms of sub-rule (1) or (2) may be ordered to pay such reasonable costs as have been incurred by the Investigating Committee and/or Disciplinary Committee in connection with the investigation and/or hearing, or such part thereof as may be considered just.

(5) If the Enforcement Committee imposes a sanction in terms of sub-rule (1), then the Enforcement Committee may, if considered appropriate, request the IRBA to publish in the IRBA's website, the name of the respondent, the charge and the sanction imposed in terms of sub-rule (1), and a cost order in terms of sub-rule (4).

(6) If the Disciplinary Committee, through a Panel, imposes a sanction in terms of sub-rule (2), the IRBA must publish in the IRBA's website, and if deemed necessary, in any other appropriate medium, the name of the registered

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auditor found guilty, a summary of the charges, the finding and the sanction imposed in terms of sub-rule (1) and the cost order in terms of sub-rule (4)

22. Enforcement of sanctions

(1) The IRBA shall take all steps and do all such things as may be necessary to give effect to the decision(s) of the Enforcement Committee, Disciplinary Committee and/or Panel.

23. Appeals and reviews

(1) The decisions of the Investigating Committee, Enforcement Committee, the Disciplinary Committee and/or the Panel are not subject to any appeal process, whether internal or external, however, such decisions may be susceptible to a review.

(2) Notwithstanding sub-rule (1), should a party file an application for a review of an interlocutory ruling issued by the Panel, such an application shall not stay the proceedings before the Panel, unless otherwise directed by a court order.

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PART C: PROCEDURAL MATTERS

24. Computation of time periods in terms of these Rules

(1) For the purpose of calculating any period of time in terms of these Rules:

(a) day means a calendar day; and

(b) the first day is excluded and the last day is included, subject to sub-rule (2).

(2) The last day of any period must be excluded if it falls on a Saturday, Sunday, or public holiday.

25. Service and filing of documents

(1) Unless otherwise provided for in these Rules, a party must serve any notice, process, correspondence or document on the other parties:

(a) by handing a copy thereof, at the address chosen by the person to receive service, to the person concerned, a representative authorised to accept service on behalf of the person or any person found at the address who is apparently older than 16 years; or

(b) emailing a copy thereof, to the email address of the person concerned or a representative authorised to accept service on behalf of the person. (2) Notwithstanding sub-rule (1) above, a charge sheet must, unless otherwise agreed between the parties, be served on the respondent by registered mail and electronic mail.

(3) An address of service chosen in terms of sub-rule (1)(a) must be within the borders of the Republic of South Africa,

(4) Documents may be filed with the IRBA or the Disciplinary Committee by:

(a) Delivering a copy of the document at the offices of the IRBA; or

(b) Emailing a copy of the document to the Committee Secretariat; or otherwise, in respect of matters dealt with under Part A, to the Director: Investigations or in respect of matters dealt with under Part B to the Director: Legal.

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(5) Service or filing in terms of sub-rule (1)(a) and (4)(a) may only be effected on business days and within business hours.

(6) Service or filing in terms of sub-rule (1)(b) and (4)(b) may be effected on any day and at any time.

(7) Notwithstanding anything contained in these Rules, the parties may agree on an alternative method and time of service.

26. Consolidation of matters

(1) The Chairperson of the Disciplinary Committee or where a Panel has already been constituted, the Chairperson of the Panel, may, of his own accord, by consent of the parties or on application by either of the parties, and on notice to the parties concerned, consolidate one (1) or more disciplinary matters so that the matters may be dealt with in the same proceedings.

(2) Notwithstanding sub-rule (1), consolidation of matters may be effected at any of the following stages:

(a) Investigation, at the instance of the Director: Investigations or CEO and/or Investigating Committee;

(b) Referral of a matter to the Disciplinary Committee, by the Director: Legal or CEO and/or the Enforcement Committee; or

(c) At any time prior to the commencement of a hearing in terms of section 50 by the Chairperson of the Disciplinary Committee or Panel.

(3) Separate investigation or disciplinary matters, may only be consolidated where:

(a) the matters arise from the same cause of action; and/or

(b) the charges preferred in all matters relate to the same respondent, notwithstanding the fact that they might arise from a different cause of actions; and/or

(c) the issues to be determined by the Enforcement Committee and/or Disciplinary Committee, depend on the determination of similar or substantially the same question(s) of law and fact;

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(d) there will be no substantial prejudice on the party or parties to the matters sought to be joined through a consolidation order;

(e) the balance of convenience favours such consolidation; and

(f) the IRBA has jurisdiction on all matters sought to be consolidated.

27. Subpoenas

(1) The IRBA may issue a subpoena under the following circumstances:

(a) At the instance of the Investigating Committee, where books, documents or evidence relevant to an investigation are sought from any person in possession of same.

(b) At the instance of the Panel, where the Panel requires any person with relevant knowledge of any matter to be considered by the Panel to appear before the Panel to be questioned or to produce any such relevant object or information.

(c) Subject to sub-rule (2) and (3), on application by a party to a hearing (including the *pro forma* complainant), requesting the IRBA to subpoena any witness on his behalf to appear before the Panel for the purpose of being questioned and/or producing certain objects or information in his possession and relevant to the proceedings before the Panel.

(2) Any party who requires the IRBA to subpoena a person in terms of sub-rule (1)(c), must file a completed Form DCR 1, together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary to the relevant to the proceedings.

(3) An application in terms of sub-rule (2) must be filed with the Disciplinary Committee Chairperson at least 30 days prior to the disciplinary hearing, or on good cause shown, such shorter period as the Chairperson of the Disciplinary Committee might allow.

(4) The Disciplinary Committee Chairperson may refuse to issue a subpoena if:

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(a) the party does not establish why the evidence of the person is necessary;

(b) the evidence sought by the requested subpoena is irrelevant or immaterial to the proceedings; or

(c) the evidence sought is intended to delay the conclusion of the proceedings, as opposed to contributing to the resolution of the issues in dispute.

(5) A subpoena may, notwithstanding the scope of the application made in terms of sub-rule (2), be issued on such terms and conditions as the Chairperson of the Disciplinary Committee may determine, including the scope of evidence to be tendered by a witness so subpoenaed.

(6) A subpoena issued pursuant to an application in terms of sub-rule (2) must be served at least 7 days prior to the scheduled date of the hearing and by the person who has requested the issuing of the subpoena or the Sheriff, at the direction of the person who requested the subpoena.

(7) Service of a subpoena issued in terms of this rule must be effected:

(a) by delivering a copy of it to the person subpoenaed personally;

(b) by sending a copy of it by registered post to the subpoenaed person's last known:

(i) residential address; or

(ii) place of business or employment;

(iii) by leaving a copy of it at the subpoenaed person's place of residence or place of business or employment with a person who is apparently older than 16 years and is residing or employed there; or

(c) in any manner agreed upon between the IRBA or a person requesting the subpoena and the person being subpoenaed.

(8) Any incidental costs incurred by the person subpoenaed in terms of this Rule for providing information and/or attending the disciplinary hearing shall be borne by:

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(a) In the case of a subpoena issued pursuant to sub-rule (1)(a) and(b), the IRBA; and

(b) In the case of a subpoena issued in terms of sub-rule (1)(c), by the person who requested the subpoena.

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PART D – RULES RELATING TO SEARCH AND SEIZURES

28. Power to conduct a search and seizure

(1) The IRBA may enter premises with the intention of searching for and seizing any information, documentation and/or items that it requires for the purpose of an investigation where there are reasonable grounds[1] to believe that relevant information is being held on the premises[2] of, and/or under the control of, any person.

(2) Notwithstanding sub-rule (1), the IRBA may only enter premises to search for and seize information that is relevant to an investigation, where[3] the Chairperson of the Investigating Committee has, following a decision by the Investigating Committee, issued a certificate of appointment authorising entry into the premises, and:

(a) a person apparently in control of the premises consents to the entry, for the purpose of a search and seizure; or

(b) a warrant is issued by a Judge or Magistrate in a court with competent jurisdiction.

(3) The following persons may, with the authority of the Investigating Committee Chairperson, conduct a search and seizure:

(a) An employee of the IRBA[4]; and/or

(b) A person appointed by the IRBA for this purpose, notwithstanding the fact that such a person is not in the employ of the IRBA.

(4) Any persons authorised to conduct a search and seizure may be accompanied and/or assisted by an employee of the IRBA or member of the Investigating Committee during the search and seizure, and where a warrant so authorises, a member of SAPS.

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[2] In *Zuma v National Director of Public Prosecutions* 2000 BCLR 1079 (CC), the court reiterated that the emphasis is on the existence of "reasonable grounds for believing". In *Powell and Others v Van der Merwe and Others* 2005 1 All SA 149 (SCA) 161 38, the court held that a reasonable suspicion is an impression formed on the basis of diverse factors, including facts and pieces of information falling short of fact, such as allegations and rumours.

[2] This includes any premises, without limitation to the premises of Registered Auditors or Firms, where in there are reasonable grounds to believe that relevant information is being held.

[3] Sections 48A and 48B.

[4] This is any person in the employ of the IRBA and duly authorised by the Investigating Committee Chairperson to enter any premises, for the purpose of searching and seizing relevant information in terms of the Act.

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29. Initiation of a search and seizure operation

(1) When initiating a search and seizure operation, the Director Investigations must prepare a formal request to the Investigating Committee, requesting authority to conduct a search and seizure on the specified premises.

(2) The request to conduct a search and seizure should include the following minimum information:

(a) the purpose of the search and seizure[5];

(b) the addresses and description of the premises to be searched;

(c) the particulars of the person(s) who will conduct the search;

(d) an indication of whether the search poses any safety concerns;

(e) an indication whether an external service provider will be required;

(f) a description of the records sought, if available; and

(g) any other information that might assist the Investigating Committee to make an informed decision[6].

(3) If satisfied that the circumstances justify an approval of the request to conduct a search and seizure, the Investigating Committee Chairperson, on behalf of the Committee, must approve the appointment of the identified person, for the purpose of conducting a search and seizure and/or approaching the court for a warrant, where consent to enter the premises is not granted by the person apparently in control thereof.

(4) The approval to conduct a search and seizure may be approved on parameters and conditions determined as appropriate by the Investigating Committee.

(5) When approving a search and seizure, the Chairperson of the Investigating Committee must issue the person authorised to conduct a search and seizure with a certificate of appointment that reflects the following minimum information:

(a) the details of the authorised person;

(b) the premises to be entered and searched, for the purpose of seizing

[5] Inclusive of the grounds under which it is believed the information is held at the premises or by any person.

[6] This is not an exhaustive list, and all relevant information must be provided to enable the Investigating Committee to make an informed decision.

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relevant information;

(c) the person/s against whom the investigation is being conducted; and,

(d) where applicable, the authority to enlist the assistance of an employee of the IRBA, a member of the Investigating Committee and/or an external service provider in conducting the search and seizure.

(6) The certificate issued in terms of sub-rule (5) must be signed by the Chairperson of the Investigating Committee or, in his absence, a member of the Investigating Committee authorised in writing to do so.

30. Consent to a search and seizure operation

(1) The following persons may consent to the authorised person entering premises, for the purpose of a search and seizure:

(a) In relation to a private residence, a person apparently in control of the business reasonably believed to be conducted at the premises, and the occupant of the private residence or part of the private residence to be entered; or

(b) In the case of any other premises, a person who is or appears to be in control of the relevant premises and who must be 16 years or older.

(2) Consent may be granted upon presentation of a certificate of authority and an explanation by the authorised person of the purpose of the search and seizure.

(3) Notwithstanding sub-rule (1) and (2), persons from whom consent is required are not obliged to provide consent and may only give consent voluntarily.

(4) In the absence of consent, premises may only be accessed on presentation of a warrant that is issued by a court with competent jurisdiction.

31. Information, documentation and/or items subject to a search and seizure operation

(1) The authorised person may only seize information that is relevant or believed to be relevant to an investigation, which may include:

(a) paper records or documentation or any item that may afford evidence of the alleged improper conduct; and

(b) electronic records stored in a digital format on any computerised

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systems, networks, storage devices, cloud systems, communication, filing and archiving systems, inclusive of third-party software.

32. Application for a search and seizure warrant

(1) The authorised person may approach a court of competent jurisdiction to request it to issue a warrant authorising the entry and search of the premises, for the purpose of seizing information that is reasonably believed to be relevant to an ongoing investigation, where:

a) Consent to conduct a search and seizure has been withheld;

b) The search and seizure is reasonably believed to be urgent and there are reasonable grounds to believe that consent will be withheld; or

c) Where there are reasonable grounds to believe that prior notice will compromise the search[7].

(2) The authorised person must send an instruction to the Director Legal requesting the initiation of an application for a search and seizure warrant.

(3) The Director Legal must, following consultation with the authorised person and the Investigations Department, cause an application for a warrant to be prepared and filed.

(4) The affidavit supporting the application must be deposed to or include an affirmation by the authorised person.

(5) The application must be issued on an urgent basis, in line with the relevant court rules, unless the information sought is not considered urgent and is not at risk of destruction or relocation. Where the application is not issued on an urgent basis, it must still be filed with the relevant court within fourteen (14) days of receipt of instructions, unless the information required to support the application remains outstanding.

(6) The application must show that there are reasonable grounds for suspecting[8] that improper conduct has occurred, and that entry and search of the premises are likely to yield information pertaining to the improper conduct. The application should therefore address the following:

[7] A search may be compromised where information is at risk of destruction or relocation.

[8] This may be a suspicion brought about by a complaint received by the IRBA, or any information coming to the attention of the IRBA through the media or any other publicly available platform.

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(a) The purpose of the search and seizure.

(b) The nature of the improper conduct being investigated.

(c) Reasons to believe that entry and search of the premises are likely to yield information pertaining to the improper conduct.

(d) The address and description of the premises sought to be searched.

(e) The relationship between the person under investigation and the premises sought to be searched.

(f) The period within which the proposed search will be conducted.

(g) The particulars of the authorised person who will conduct the search.

(h) Whether the search poses any safety concerns.

(i) Whether law enforcement[9] or an external service provider will be required to assist in the search and seizure, and where an external service provider is required, details pertaining to:

(i) Why the presence of an external service provider is necessary;

(ii) Whether an external service provider brings special expertise or knowledge to the search and seizure operation, and whether such knowledge and/or expertise are not ordinarily available within the IRBA;

(iii) The role that an external service provider is required to play in the search and seizure operation;

(iv) Under whose control and authority an external service provider would operate during the search and seizure operation; and

(v) In what manner the presence and assistance of an external service provider would render the search more effective and compliant, and possibly reduce or limit the incursion into the privacy and other rights of those who are the subject of the search.

(j) A description of the records sought that will intelligibly convey to both the searcher and the searched, the ambit of the search that the warrant authorises[10].

[9] If the assistance of law enforcement is required, the reasons supporting same, as stipulated in paragraph 22, must be outlined.

[10] *Zuma v National Director of Public Prosecutions 2006 2 All SA 91 (D).*

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(k) Any other information that might assist the Judge or Magistrate to make an informed decision when granting a warrant.

(7) The application must be issued in a court that has jurisdiction to consider the application and issue the warrant sought, this being the court in the area where the premises sought to be accessed are located.

(8) Should the application be granted, the warrant must be issued and bear the signature of the issuing Judge or Magistrate and may include the following information:

(a) The person / firm / entity to whom it is addressed;

(b) The person / firm / entity's address;

(c) The name of the registered auditor subject to the investigation of alleged improper conduct;

(d) The alleged improper conduct being investigated;

(e) A description of the records that intelligibly conveys to both the searcher and the searched, the ambit of the search that the warrant authorises;

(f) Conditions of the warrant, if any, (e.g., assistance of external service providers, SAPS, time of execution);

(g) Details of the Authorised Person;

(h) Stamp of the Court; and

(i) Date on which the warrant was issued.

33. Search and seizure operation

(1) A search and seizure must be conducted within ordinary business hours.

(2) Notwithstanding sub-rule (1), the search and seizure may be conducted outside ordinary business hours, but as close to ordinary business hours as the circumstances reasonably permit, where:

(a) the authorised person reasonably believes that the purpose for which the entry and search are sought is likely to be defeated by a delay; and/or

(b) the warrant expressly permits the search and seizure to be conducted at night or at any other time specified therein.

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(3) On arrival at the premises, the authorised person must:

(a) present the certificate of authority issued by the Investigating Committee Chairperson, supported by his/her identification document, to the person apparently in control of the premises and on request, to any other person affected by the search and seizure.

(b) enquire if the person is in fact in control of the premises intended to be searched;

(c) state the purpose for requesting to enter the premises[11];

(d) in the absence of a warrant, and upon establishing the person in charge of the premises, request permission to enter the premises. When requesting such permission, the authorised person must advise the person apparently in control of the premises that he has the right to refuse access.

(4) Where consent to conduct a search and seizure is granted, the authorised person must request the person granting consent to complete and sign the prescribed consent form.

(5) Where consent to conduct a search and seizure is withheld, the authorised person must leave the premises and initiate processes for obtaining a warrant.

(6) If access is sought on the basis of a warrant, the authorised person must present a copy of the warrant to the person in charge of the premises and advise such a person that failure to allow access to the premises, for the purpose of conducting a search and seizure, would constitute contempt of court, an offence that would be punishable by either a fine or imprisonment or both.

(7) The person apparently in control of the premises must, after consent for a search and seizure is granted or on presentation of a warrant authorising a search and seizure:

(a) Provide full access to the premises, relevant information, documentation and/or items;

(b) Disclose all relevant computer systems or software in use at the

[11] Specifically, the authorised person must convey that they seek to enter the premises to search the premises and to do anything contemplated by Section 48(A)(7).

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premises;

(c) Provide all passwords and access paths to the computer systems or software;

(d) Assist with the navigation of relevant computer systems or software; and

(e) Subject to Rule 34, answer fully and truthfully, all questions posed by the authorised person, as they relate to the search and seizure and its purpose[12];

(8) Upon obtaining consent to enter the premises or presenting a warrant and obtaining access, the authorised person should proceed to enter, search the premises, and seize information, documentation and/or items relevant to the investigation.

(9) Unless warranted, force should not be used to enter the premises, search for information, or seize the required information. Where force is used, it must not be excessive in nature and must be reasonably necessary to ensure access.

(10) When conducting a search and seizure, the authorised person must take cognisance of the affected persons' constitutional rights, including their right to freedom, privacy, security, and dignity. Therefore, the authorised person must:

(a) Conduct the search and seizure in a dignified manner and may not:

(i) Argue with, insult and/or disrespect the person apparently in control of the premises or any person present at the premises at the time; or

(ii) Exert authority in a manner that is disrespectful or beyond the powers provided for in the Act.

(b) Conduct the search in a decent and orderly manner, by entering and searching only such areas or objects as are reasonably

[12] Section 48A(9) states that the law relating to privilege – as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court – applies, with the necessary changes, in relation to the production of any information, including, but not limited to, any working papers, statements, correspondence, books or other documents, to the investigating committee acting in accordance with this section. In addition to this, information incriminating the person being questioned may not be used in criminal proceedings against them, save for exceptions as set out in subsection (10)(e).

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required for the investigation, conducting the search as discreetly as possible, and causing as little disturbance as possible.

(c) Without compromising the search and seizure, conduct the search expediently and conclude same without undue delay.

(11) During a search and seizure, the authorised person may:

(a) Subject to the limitations set out in the warrant, if a search is conducted on the basis of one, access any part of the premises, as well as any information, documentation or items on the premises that are deemed to be relevant to the investigation.

(b) Open or cause to be opened any strongroom, safe, cabinet, or other container in which the authorised person reasonably suspects there is information, documentation or items that may be relevant to the investigation.

(c) Examine, make extracts from and copy any relevant documentation on the premises.

(d) Question any person on the premises, to find out relevant information or obtain documentation, but only after advising such a person that he has the right to object if information or documents sought might incriminate such a person.

(e) Require a person on the premises to produce any relevant document or item that is in the possession or under the control of such a person.

(f) Require a person on the premises to operate any computer, or similar system, that is on or available through the premises to:

(i) Search any information that is in or available through that system; and

(ii) Produce a record of that information in any media that the authorised person reasonably requires.

(g) If it is not practical or appropriate to make a request in terms of sub-rule (11)(f), operate any computer or similar system that is on or available through the premises, for the purpose set out in sub-rule (11)(f).

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(h) Take possession of and remove from the premises any relevant document or item, excluding documents and/or items in respect of which privilege is asserted, unless privilege has been waived.

(12) Records must be seized in a manner that:

(a) avoids any damage or destruction;

(b) allows for seamless retrieval;

(c) preserves the integrity of the information; and

(d) in accordance with best practices.

(13) The authorised person must give the person apparently in control of the premises:

(a) a reasonable opportunity to make copies of the documents taken, if so requested; and

(b) a written receipt for documents or items taken from the premises during a search and seizure process.

(14) The receipt referred to in sub-rule (13)(b) should, provide the following minimum information:

(c) a brief description of the document or item;

(d) the nature of the document or item; and

(e) details of the storage method.

(15) The person apparently in control of the premises must verify and acknowledge the written receipt of documents seized.

34. Objections to question(s) or disclosure of document(s) and/or information during a search and seizure

(1) A person who is questioned or required to produce documentation or information during a search and seizure may object to answering the questions, or to producing the documentation or information, on the grounds that the answer and/or the contents of the documentation, or information may tend to incriminate that person.

(2) Notwithstanding an objection in terms of sub-rule (1), the person who is questioned shall, if the authorised person so decides, answer the question(s) or produce the documentation or information, subject to the

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35. Limitations to a search and seizure operation

(1) The authorised person, may:

(a) In the absence of a warrant, not enter the premises where consent has not been provided or if there is no one present at the premises[13].

(b) Enter and search areas or objects, as are reasonably required for the purposes of the investigation.

(c) Only seize information, documentation and/or items that are reasonably believed to be relevant.

(d) Only ask questions that are relevant to the search and seizure and its purpose.

36. Search and seizure report

(1) No later than three (3) business days after the conclusion of a search and seizure, the authorised person must prepare a report on the outcome of the search and seizure and cause same to be submitted to the Director Investigations and the Investigating Committee Chairperson, together with the handover of the documentation, information and/or items seized to the Director Investigations.

37. Use of police officials during a search and seizure

(1) A police official may be engaged where:

(a) a warrant issued by a competent court authorises the engagement;

(b) a search and seizure request has been met by force, notwithstanding a duly issued and presented warrant; and/or

(c) Full access to the premises and/or information has been denied, notwithstanding the presentation of a warrant.

(2) Where the assistance of a police official is sought in terms of sub-rule (1), the Director Investigations shall issue a letter to the SAPS, seeking its

[13] Where a warrant has been obtained and there is no one at the premises, a copy of the warrant must be fixed in a prominent and accessible place on the premises i.e., main gate or door. Where two attempts were made to conduct a search and seizure at a certain premises, however, same could not be carried out due to the premises being unoccupied or due to there being no person apparently in charge of the premises, then the authorised person may approach the court that issued the warrant, on an urgent basis, to obtain the leave of the court to enter the premises notwithstanding the fact that that the premises is unoccupied.

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intervention in conducting a search and seizure, enforcing a warrant and/or evading a threat of force or violence. The request must be supported by the warrant.

(3) The authorised person must attend to the offices of the SAPS and present the letter requesting assistance, together with the warrant.

(4) Members of SAPS may use reasonable force, as is necessary, to assist the authorised person in effectively conducting a search and seizure.

38. Retention and/or preservation of documents/information/items seized

(1) Documentation, information and/or items seized during a search and seizure must:

(a) be kept in safe custody and the integrity thereof preserved;

(b) be protected from any loss, tampering and/or destruction;

(c) be properly identified for seamless retrieval; and

(d) only be accessed by IRBA-cleared personnel.

(2) The IRBA shall maintain a register of seized information, documentation and/or items, which shall be updated on receipt of a report contemplated in Rule 36.

39. Use of seized documentation, information and/or items

(1) Information obtained during a search and seizure may only be used for the purpose of conducting an investigation into alleged improper conduct and/or prosecuting a disciplinary process arising therefrom.

(2) Documents or information obtained during a search and seizure may only be disclosed in terms of Section 57A, specifically:

(a) for the purpose of enforcing compliance with the Act or any decision made in terms of the Act;

(b) when required to do so by a court;

(c) at the written request of, and to, any appropriate regulator that requires the documents or information for the institution of an investigation, with a view to the institution of any disciplinary process or criminal prosecution; or

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(d) at the written request of, and to, any appropriate international regulator of audits and auditors that requires such information for the purpose of an investigation or a disciplinary process.

(3) Where information, documentation and/or items are obtained through questioning and the person so questioned had objected to being questioned or to disclose such information or documentation on the basis that the answer, the contents of the document or the information may tend to incriminate the person, then an answer given or a document or information produced during such questioning may only be used for the purposes of an investigation or disciplinary process by the Investigating Committee, Enforcement Committee or the Disciplinary Committee, in terms of the Act, and shall not be admissible as evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of Section 53, based on the false or misleading nature of the answer.

40. Access to seized documentation, information and/or items

(1) A person, or his/her authorised representative, from whose premises documentation, information and/or items were taken may, during normal office hours and under the supervision of the Investigating Committee Chairperson, access – for the purpose of examining, copying and/or making extracts – the documentation, information and/or items seized.

(2) The person seeking access or his authorised representative, shall engage the Director Investigations to arrange for access to the seized documentation/ information or items.

(3) The access referred to in sub-rule (1) must be on no less than 48 hours written notice on business days.

(4) The notice requesting access to seized documentation, information and/or items must identify the documentation, information and/or items sought to be accessed and the purpose of such access.

(5) The IRBA will provide access to the documentation/information and/or items so required at the time and venue as determined by the IRBA in consultation with the requester.

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41. Return of seized documentation, information and/or items

(1) The Investigating Committee Chairperson must ensure that any documentation, information and/or items taken from the premises are returned to the person in charge of the premises when:

(a) it becomes apparent that the seized documentation, information and/or items are not relevant for the purpose of the investigation and/or any subsequent disciplinary processes;[14]

(b) the retention of the documentation, information and/or items is no longer necessary for the purpose of the investigation and/or any subsequent disciplinary processes; and/or

(c) the investigation and/or any subsequent disciplinary proceedings have been finalised.

(2) Despite sub-rule (1), the documentation, information and/or items seized need not be returned, if it is not in the best interest of the public or any member of the public for the documentation, information and/or items to be returned.

[14] See the judgement in *Ndabeni v Minister of Law and Order and Another 1984 (3) SA 500 (D).*

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PART E: REFERRAL OF A NON-AUDIT COMPLAINT TO AN ACCREDITED PROFESSIONAL BODY FOR INVESTIGATION AND DISCIPLINARY PROCEEDINGS

42. Referral of a non-audit complaint to an accredited professional body

(1) The Director Investigations or CEO may, if he considers it appropriate, refer a non-audit complaint brought against a registered auditor to an accredited professional body for investigation and disciplinary proceedings.

(2) Notwithstanding sub-rule (1), a non-audit compliant may only be referred to an accredited professional body for investigation and disciplinary proceedings if it falls within the confines of the Constitution and Rules of the accredited professional body.

(3) Upon deciding to refer a non-audit compliant to an accredited professional body, the Director Investigations or the CEO, shall:

(a) cause a referral letter, together with all documents received and/or in the possession of the IRBA relating to or relevant to the non-audit complaint, to be sent to the accredited professional body[15]; and

(b) cause a letter to be sent to the respondent, and the complainant, advising them that the complaint has been sent to the accredited professional body for investigation and disciplinary proceedings.

(4) The Director Investigations or CEO must maintain a register of matters referred to an accredited professional body for investigation and disciplinary proceedings.

(5) The Register referred to in sub-rule (4) must be submitted to the Enforcement Committee, on a quarterly basis for noting.

(6) Where an accredited professional body believes that a non-audit complaint referred to it in terms of sub-rule (1) falls outside the confines of its Constitution and Rules, the accredited professional body shall, within ten

[15] Section 57A(2) permits disclosure of information relating to a non-audit complaint referred by the IRBA to an accredited professional body for investigation.

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(10) days of receipt of such referral, object to the referral.

(7) The objection referred to in sub-rule (6) shall be sent to the Director Investigations or the CEO in writing and shall include the following minimum information:

(a) the details of the registered auditor;

(b) the details of the complainant;

(c) the IRBA's reference number;

(d) a summary of the matter; and

(e) reasons why the accredited professional body believes that the referred complaint falls outside of its Constitution and Rules.

(8) The Director Investigations or the CEO shall, within ten (10) days of receipt of the notice of objection, consider the objection and determine how the matter should proceed.

(9) A determination made in terms of sub-rule (8) shall be sent to the accredited professional body, the complainant, and the respondent within the time period set out therein.

(10) Where a complaint against a registered auditor relates to both an audit and a non-audit matter which cannot be distinctly separated, the Director Investigations or the CEO must cause such a compliant to be Investigated by the IRBA in accordance with part A of these Rules.

(11) Where a complaint has been referred for investigation and disciplinary proceedings to the accredited professional body in term of sub-rule (1), the IRBA shall not investigate and/or perform any other functions in relation to the complaint.

(12) The accredited professional body to whom the matter has been referred, must, unless an objection has been raised in terms of sub-rule (6) and upheld:

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(a) within ten (10) days of receipt of the referral of the non-audit compliant, send a letter to the Director Investigations or the CEO acknowledging receipt and registration of the referral;

(b) liaise directly with the complainant and respondent regarding the investigation of the complaint and/or documents relevant thereto;

(c) within twelve (12) months of the date of receipt of the referral, investigate the complaint and where applicable, initiate and finalise disciplinary proceedings against the respondent in line with its Constitution and Rules;

(d) impose an appropriate sanction on the respondent, based on the outcome of the investigation and/or disciplinary proceedings; and

(e) within ten (10) days of the conclusion of the investigation and/or disciplinary proceedings, advise the Director Investigations or the CEO of the outcome thereof, and where applicable, any sanction imposed on the respondent.

(13) The accredited professional body may, where appropriate, send a written request for an extension of the period set out in sub-rule(12)(c) to the Director Investigations or the CEO for consideration and approval.

(14) The request referred to in sub-rule(13) must be sent no later than nine (9) months from the date on which the complaint is referred to the accredited professional body and must include the following minimum information:

(a) details of the matter;

(b) the status of the matter;

(c) the reasons supporting the request for an extension; and

(d) the anticipated date of finalisation of the matter.

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43. Outcomes of the accredited professional body's investigation and disciplinary proceedings

(1) The findings and outcomes of the accredited professional body's investigation and disciplinary proceedings on referred non-audit complaints shall be binding on the IRBA.

(2) Where the accredited professional body imposes termination of the respondent's membership as a sanction, the respondent will no longer meet the requirements for registration as a registered auditor, accordingly, the IRBA shall be obliged, in terms of section 39(2)(b), to automatically cancel the respondent's registration.

(3) Where the accredited professional body has imposed sanctions other than termination of the respondent's membership, the IRBA shall:

(a) note the sanction imposed on its records; and

(b) consider the sanction as part of the respondent's annual fit and proper assessment conducted in line with the IRBA's fit and proper policy and annual renewal requirements.

(4) Where an accredited professional body imposes a suspension from practice without termination of membership, the accredited professional body must issue a letter stating that the respondent is not in good standing. The letter must be issued at the time of reporting the outcome to the IRBA and on receipt of any third-party enquiries on the respondent's standing.

(5) The IRBA shall not issue a further sanction on the non-audit complaint that was referred to the accredited professional body for investigation and disciplinary proceedings.

(6) Notwithstanding sub-rule (5), any finding(s) issued and sanction(s) imposed by the accredited professional body on the respondent and noted in the IRBA records, may be considered by the IRBA committees during any future investigation or disciplinary processes.

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44. Monitoring of the accredited professional body's investigation and disciplinary processes

(1) The IRBA must, on an annual basis, monitor, in line with its accreditation model, the rigor of the accredited professional body's investigation and disciplinary processes, inclusive of sanctions imposed against respondents for improper conduct, so as to satisfy itself on the integrity and fairness of such processes.

(2) A monitoring contemplated in sub-rule (1) may result in action plans for implementation by the accredited professional body and any failure by the accredited professional body to implement any such action plans shall be dealt with in line with the IRBA accreditation model.

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FORM: DCR1
REQUEST FOR A SUBPOENA IN TERMS OF RULE 27(1)(c) OF THE DISCIPLIARY RULES

DISCIPLINARY COMMITTEE OF THE INDEPENDENT REGULATORY BOARD FOR AUDITTORS

In the matter between:

INDEPENDENT REGULATORY BOARD FOR AUDITORS **Complainant**

and

_____ **Respondent**

Set down for hearing before the Disciplinary Hearing Panel on: _____

It is hereby requested in terms Rule 27(1)(c) of the Disciplinary Rules, that the chairperson of the Disciplinary Committee Subpoena, in terms of Section 50(4) of the Auditing Profession Act 26 of 2005, as amended:

_____

(Name of Subpoenaed Person)
OF

_____

(Address of Subpoenaed Person)

The above mentioned person should be subpoenaed-

☐ for questioning before the disciplinary hearing panel

☐ to produce any book, document, visual footage or object before the disciplinary hearing panel

☐ to give expert evidence before the disciplinary hearing panel

(Tick appropriate block)

If the person sought to be subpoenaed is required to bring and produce the books, documents, visual footages or objects, please provide a list thereof herein below:

a) _____ b) _____

c) _____ d) _____

e) _____ f) _____

If the person sought to be subpoenaed is required to give expert evidence, please provide a brief description of the issues in respect of which expert evidence is sought:

_____

_____

_____

Requested by: _____ Capacity: _____

_____
(Signature)

_____
(Date)

Kindly note that in terms of Rule 27, this request must be accompanied by a written motivation setting out why the evidence of the person to be subpoenaed is necessary to the relevant to the proceedings. This form should be filed with the IRBA at least 30 days prior to the disciplinary hearing.

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FORM: DCR 2

CERTIFICATE OF AUTHORITY TO CONDUCT A SEARCH AND SEIZURE ISSUED IN TERMS OF SECTION 48A(2) OF THE AUDITING PROFESSION ACT 26 OF 2005, AS AMENDED BY ACT 2 OF 2015 AND ACT 5 OF 2021 [THE ACT]

This certificate authorises _____, with ID number _____ (authorised person), to:

a) Enter, in terms of Section 48A(1) of the Act, the premises that are located at: _____ __ (premises), with the consent of the person apparently in charge of the premises;

b) For the purpose of searching for and seizing any documentation, items and/or information that is considered relevant to an investigation of improper conduct against: _____ __ _____ in relation to: _____

c) Exercise any powers contemplated in Section 48A(7)(a-c) and (8) of the Act while performing a search and seizure;

d) Question, in terms of Section 48A(10), any person found at the premises on any issue relating to the investigation and/or search and seizure; and

e) In the event of the person apparently in charge of the premises refusing to consent to the search and seizure, to request the Director Legal to cause the initiation of appropriate processes to obtain a warrant of search and seizure, as contemplated in Section 48B of the Act.

_____

CHAIRPERSON OF THE IRBA INVESTIGATING COMMITTEE

DATE: _____

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FORM: DCR 3

CONSENT TO SEARCH AND SEIZURE
Granted in terms of Section 48A(1)(a) of the Auditing Profession Act 26 of 2005, as amended by Act 2 of 2015 and Act 5 of 2021

I, the undersigned,

_____
(Full names)

_____
(Identity number)

In my capacity as:

_____

(For example, the person in control of the business premises, or the occupant of the private residence premises)

do hereby consent that _____ and/or any persons assisting him/her, may enter the premises, being _____, and search same for any information, documentation and/or items that are relevant to an investigation currently being conducted by the IRBA against _____ in relation to _____ and to seize all information, documentation and/or items considered relevant to such an investigation, including, operating any computer system that is available at the premises, for the purpose of searching for and seizing relevant information.

I confirm that I have been duly advised of my right to refuse access and, notwithstanding such right, consent to the search and seizure freely, without any form of undue influence and/or duress.

SIGNED ON THIS _____ DAY OF _____, 20_____.

AS WITNESS:

_____ _____

Name **Signature**

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FORM: DCR 4

INVENTORY/RECIEPT OF SEIZED DOCUMENTS OR ITEMS
Issued in terms of Section 48A(7)(c)

No.	DESCRIPTION OF DOCUMENT OR ITEM SEIZED	NATURE OF DOCUMENTS OR ITEMS[1]	COMMENT
1.			
2.			
3.			
4.			
5.			

I, _____,
having been duly authorised to conduct a search and seizure at the premises located at _____,
confirm that following a search, I seized the above listed information, documentation and/or items from the premises.

SIGNATURE: _____

DATE: _____

I, _____,
being _____ (capacity),
confirm that the search and seizure was conducted in my presence and that I have verified the documents and/or items listed above as documents and/or items seized by the authorised person during the search and seizure process. I also confirm receipt of a copy of this inventory list.

SIGNATURE: _____

DATE: _____

[1] Examples are paper records, laptops, USBs, etc.

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