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## THE PRESIDENCY

No. 529 17 June 2015

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 2 of 2015: Auditing Profession Amendment Act, 2015**



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**GENERAL EXPLANATORY NOTE:**

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.
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(English text signed by the President)  
(Assented to 16 June 2015)

# ACT

**To amend the Auditing Profession Act, 2005, so as to provide for the regulation of candidate auditors and to update references to the Companies Act, 2008; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 26 of 2005**

1. Section 1 of the Auditing Profession Act, 2005 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the substitution for the definition of “company” of the following definition:
- “**‘company’** has the meaning assigned to it in the Companies Act, 2008 (Act No. 71 of 2008);”;
- (b) by the substitution for the definition of “professional body” of the following definition: 10
- “**‘professional body’** means a body of, or representing[,]—
- (a) registered auditors and registered candidate auditors; or **[both]**
- (b) accountants, **[and]** registered auditors and registered candidate auditors;”; and 15
- (c) by the insertion after the definition of “registered auditor” of the following definition:
- “**‘registered candidate auditor’** means an individual who has obtained a professional accountant designation from an accredited professional body, who is registered as a candidate auditor with the Regulatory Board and who is serving under the supervision of a registered auditor;” 20

**Substitution of section 6 of Act 26 of 2005**

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

**“Functions with regard to registration of auditors and candidate auditors**

- 6. [(1)]** The Regulatory Board must, subject to this Act—
- (a) prescribe minimum qualifications, competency standards and requirements for registration of auditors and candidate auditors in addition to those provided for in this Act; 5
  - (b) consider and decide on any applications for registration of auditors and candidate auditors;
  - (c) prescribe the period of validity of the registration of a registered auditor and a registered candidate auditor; 10
  - (d) keep [**a register**] registers of registered auditors and registered candidate auditors and decide on—
    - (i) the [**register**] registers to be kept;
    - (ii) the maintenance of the [**register**] registers; and
    - (iii) the reviewing of the [**register**] registers and the manner in which alterations thereto may be effected; 15
  - (e) ensure that the [**register**] registers of registered auditors and registered candidate auditors [**is**] are at all reasonable times open to inspection by any member of the public;
  - (f) terminate the registration of registered auditors and registered candidate auditors in accordance with this Act; and 20
  - (g) prescribe minimum requirements for the renewal of registration and re-registration of registered auditors and registered candidate auditors.”. 25

**Amendment of section 21 of Act 26 of 2005** 25

**3.** Section 21 of the principal Act is hereby amended by the insertion in paragraph (a) of subsection (2) after the expression “registered auditors” of the expression “and registered candidate auditors”.

**Substitution of section 36 of Act 26 of 2005**

**4.** The following section is hereby substituted for section 36 of the principal Act: 30

**“Effect of termination of accreditation on registered auditors and registered candidate auditors**

**36.** (1) The fact that the accreditation of a professional body has ended in terms of section 35 does not affect the registration under this Act of any registered auditor or registered candidate auditor who was a member of the professional body at the time of the termination. 35

(2) Registered auditors or registered candidate auditors referred to in subsection (1) who were members of the professional body referred to in subsection (1) must, within six months of the termination of the accreditation of the professional body or within such other period as may be prescribed by the Regulatory Board, provide written proof to the satisfaction of the Regulatory Board that they— 40

- (a) have become members of another accredited professional body; or

(b) have made arrangements for their continuing professional development as recognised or prescribed by the Regulatory Board.

(3) Where a registered auditor or registered candidate auditor referred to in subsection (1) fails to comply with the requirements of subsection (2), the Regulatory Board, subject to subsection (4), may cancel the registration of the registered auditor or registered candidate auditor under this Act. 5

(4) The Regulatory Board must, prior to the cancelling of the registration of a registered auditor or registered candidate auditor, give notice in writing to the registered auditor or registered candidate auditor concerned of its intention to cancel and the reasons on which it is based, and must afford the registered auditor or registered candidate auditor a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding to cancellation.”. 10

**Substitution of section 37 of Act 26 of 2005**

5. The following section is hereby substituted for section 37 of the principal Act: 15

**“Registration of individuals as registered auditors and registered candidate auditors**

**37.** (1) An individual must apply on the prescribed application form to the Regulatory Board for registration as an auditor or a candidate auditor.

(2) If, after considering an application, the Regulatory Board is satisfied that the applicant— 20

- (a) has complied with the prescribed education, training and competency requirements for a registered auditor or registered candidate auditor;
- (b) has arranged for his or her continuing professional development if the applicant is not a member of an accredited professional body; 25
- (c) is resident within the Republic;
- (d) is a fit and proper person to practise the profession;
- (e) has met any additional requirements for registration as prescribed under section 6,

the Regulatory Board must, subject to subsections (3) and (5), register the applicant, enter the applicant’s name in the applicable register and issue to the applicant a certificate of registration on payment of the prescribed fee. 30

(3) The Regulatory Board may not register an individual as a registered auditor or registered candidate auditor if that individual—

- (a) has at any time been removed from an office of trust because of misconduct related to a discharge of that office; 35
- (b) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery, uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty, other than theft, fraud or forgery, committed prior to 27 April 1994 associated with political objectives, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding such an amount as may be prescribed by the Minister; 40
- (c) is for the time being declared by a competent court to be of unsound mind or unable to manage his or her own affairs; or 45

(d) is disqualified from registration under a sanction imposed under this Act.

(4) For the purposes of subsection (3)(b), the Regulatory Board must take cognisance of the prevailing circumstances in a foreign country relating to a conviction.

(5) The Regulatory Board may decline to register as a registered auditor or registered candidate auditor an individual who is an unrehabilitated insolvent, has entered into a compromise with creditors, has applied for debt review or has been provisionally sequestered.”.

**Amendment of section 38 of Act 26 of 2005**

6. Section 38 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) the company [**is incorporated and registered as a company under the Companies Act, 1973 (Act No. 61 of 1973), with**] has a share capital and its memorandum of [association] incorporation provides that its directors and past directors shall be liable jointly and severally, together with the company, for its debts and liabilities contracted during their periods of office;”;

(b) by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(d) the [articles of association] memorandum of incorporation of the company provides that—

(i) the company may, without confirmation by a court, purchase on such terms as it may consider expedient any shares held in it and the shares purchased are available for allotment in accordance with the company’s [articles of association] memorandum of incorporation; and

(ii) despite any provision to the contrary in any other law, a member of the company may not appoint a person who is not a member of the company to attend, speak or vote on behalf of the member at any meeting of the company.”; and

(c) by the substitution for subsection (4) of the following subsection:

“(4) In its application to a company which is a registered auditor, section [20] 8(2)(c) of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), has effect [with the exception of subsection (1)(b)].”.

**Amendment of section 39 of Act 26 of 2005**

7. The following section is hereby substituted for section 39 of the principal Act:

**Termination of registration of registered auditors and registered candidate auditors**

**39.** (1) Subject to subsection (3), the Regulatory Board must cancel the registration of any registered auditor that is an individual or any registered candidate auditor, and—

(a) who subsequent to registration becomes subject to any of the disqualifications mentioned in section 37(3);

(b) whose registration was made in error or on information subsequently proved to be false; or

(c) who prior to registration has been guilty of improper conduct because of which the registered auditor or registered candidate auditor is, in the opinion of the Regulatory Board not a fit and proper person to be registered.

(2) Subject to subsection (3), the Regulatory Board may cancel the registration of any registered auditor that is an individual or any registered candidate auditor, and—

- (a) whose estate is sequestrated or provisionally sequestrated or who enters into a compromise with creditors or who has applied for debt review; or 5
- (b) who ceases to be a member of an accredited professional body and does not within six months of such cessation provide written proof to the satisfaction of the Regulatory Board that such registered auditor or registered candidate auditor has made arrangements for his or her continuing professional development. 10

(3) Prior to cancelling a registration, the Regulatory Board must give notice in writing to the registered auditor or registered candidate auditor concerned of its intention to cancel and the reasons on which it is based, and afford the registered auditor or registered candidate auditor a period of not less than 21 days and not more than 30 days in which to submit grounds for not proceeding with cancellation. 15

(4) The registration of a registered auditor that is a partnership, sole proprietor or company automatically lapses if it no longer complies with section 38(1). 20

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

(6) At the written request of a registered auditor or registered candidate auditor, the Regulatory Board must remove the name of the registered [auditor's name] auditor or registered candidate auditor from the applicable register, but the removal does not affect any liability incurred by the registered auditor or registered candidate auditor prior to the date of the removal. 30

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

(8) As soon as practicable after the registration of a registered [auditor's registration] auditor or registered candidate auditor has been cancelled or removed the Regulatory Board must publish a notice of the cancellation or removal, specifying the name of the registered [auditor's name] auditor or registered candidate auditor.”. 35

**Amendment of section 40 of Act 26 of 2005** 40

8. Section 40 of the principal Act is hereby amended by the insertion in subsections (1) and (2) after the expression “registered auditor” of the expression “or registered candidate auditor”.

**Amendment of section 41 of Act 26 of 2005**

9. Section 41 of the principal Act is hereby amended— 45

- (a) by the substitution in subsection (6)(a) for subparagraph (iii) of the following subparagraph:

- “(iii) in the case of a company, the present first names, or initials, and surnames of the directors [**as required by section 171 of the Companies Act, 1973 (Act No. 61 of 1973)**];” and  
(b) by the deletion of subsection (9).

**Amendment of section 42 of Act 26 of 2005**

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10. Section 42 of the principal Act is hereby amended by the insertion after the expression “registered auditors” of the expression “or registered candidate auditors”.

**Amendment of section 47 of Act 26 of 2005**

11. Section 47 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

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“(b) Despite the generality of paragraph (a), the Regulatory Board, or any person authorised by it, must at least every three years inspect or review the practice of a registered auditor that audits a public **[interest]** company as defined in section 1 of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008).”.

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**Insertion of section 51A in Act 26 of 2005**

12. The following section is hereby inserted in the principal Act, after section 51:

**“Application of certain provisions to registered candidate auditors**

**51A. Sections 48, 49, 50 and 51 apply to registered candidate auditors with the necessary changes.”.**

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**Amendment of long title of Act 26 of 2005**

13. The following long title is hereby substituted for the long title of the principal Act:

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

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**Short title**

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14. This Act is called the Auditing Profession Amendment Act, 2015.