

Regulation of the auditing profession in South Africa

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ABSTRACT

As a result of the worldwide spate of financial scandals, society has lost much of its confidence in the auditing profession because of a growing perception that the profession does not act in the public interest. Ineffective regulation is one of the key factors detracting from the value of the audit function, thereby undermining public confidence in the profession as a whole. The opportunity has been grasped in South Africa, as in some other countries, to make changes to the regulatory mechanisms of the auditing profession in an effort to restore trust in the profession. In this article the regulation of the auditing profession in South Africa, according to the Auditing Profession Act, 2005, (implemented in April 2006), is evaluated against the factors that are of importance to an effective and creditable regulatory system with reference to the regulation of the profession in some other English speaking countries with which the South African auditing profession has historical and professional ties. It appears that those factors that are important to a regulatory system are to a large degree addressed by the regulation of the auditing profession in South Africa. This should contribute to restore the trust in the auditing profession.

Key words

Regulation; regulator; auditing profession; Auditing Profession Act, 2005; Independent Regulatory Board for Auditors; public interest; public confidence; independence

1 INTRODUCTION

Barker (2002) states clearly that the society's trust in a group of professional persons is the "heartbeat of that profession". Since the beginning of the nineties there have been increasingly frequent and vociferous accusations that the auditing profession worldwide, including South Africa, is acting, not in the public interest, but rather in its own interests only (Mays 1995:58-59; Sikka & Willmott 1995; Gray & Manson 2000:567). As early as 2001 Turner, former chief accountant of the United States Securities and Exchange Commission, observed that there was "a small but growing crack in the public's confidence" in the auditing profession (Rankin 2001). Since then, public confidence has waned with each corporate failure. In South Africa we saw, among others, the Masterbond, Regal Treasury Private Bank, LeisureNet, Saambou, and MacMed debacles.

Worldwide, financial scandals have led to a crisis of confidence in the auditing profession, and to serious questions being asked about the integrity of the financial reporting system and the quality and usefulness of information it generates (SEC chairman speaks ... 2002; Svaldi 2002). The value of the external audit function has sunk to such a level that it runs the risk of extinction (Gloeck & De Jager 1998:iv).

"... the damage to the reputation of our financial reporting system and its critical guardians has been so severe that the investing public has lost confidence and now demands real reforms" (Three voices, one message 2003).

The causes of these corporate failures are complex and the shortcomings revealed by these failures highlight, amongst other things, the regulatory structure of the auditing profession. A number of authors have confirmed that ineffective regulation is one of the key factors detracting from the value of the audit function, thereby undermining public confidence in the profession as a whole (Land 1995; Gloeck & De Jager 1998; Gray & Manson 2000; Irish Government Publications 2000). Land (1995:92) summarised it as follows:

"From the profession's point of view, what lies at the heart of public criticism is the issue of regulation."

According to Churchill the Chinese ideogram for crisis consists of two elements representing danger and opportunity respectively (Barker 2002). If this is applied to the crisis in the auditing profession:

The danger: The auditing profession no longer has a reason for existence.

The opportunity: The auditing profession can endeavour to regain the confidence of society by means of meaningful reforms to its regulatory processes.

The opportunity has been grasped in South Africa, as in some other countries, to put the auditing profession under the magnifying glass prior to making changes to its regulatory mechanisms in an effort to restore trust in the profession. The Auditing Profession Act, 2005 is the outcome of this review process.

Against that background, this article will evaluate the regulation of the auditing profession in South Africa according to the Auditing Profession Act, 2005 in terms of the factors that are of importance to an effective and creditable regulatory system. In the evaluation reference will be made to the regulation of the profession in various English speaking countries with which the South African auditing profession has historical and professional ties.

In the first section the *background to the Auditing Profession Act, 2005* is examined. In the next section the *factors that are important to an effective and creditable regulatory system* are described and used as a basis for *evaluating the regulation of the auditing profession*.

2 BACKGROUND TO THE AUDITING PROFESSION ACT, 2005

The following abbreviations are used in this article:

AASB	Auditing and Assurance Standards Board
APA	Auditing Profession Act, 2005
CAG	Standards Consultative Advisory Group
CFAE	Standards Committee for Auditor Ethics
CFAS	Standards Committee for Auditing Standards
IFAC	International Federation of Accountants
IFIAR	International Forum of Independent Audit Regulators
IRBA	Independent Regulatory Board for Auditors
PAAB	Public Accountants' and Auditors' Board
PFMA	Public Finance Management Act

In most English-speaking countries the auditing profession was, until recently, subject to some form of self-regulation (SAICA 2003). Society was not really aware of the self-regulating nature of the auditing profession until, over the last number of years, they became aware of its negative implications (Grumet 2002). Phrases such as the following are used to describe the auditing profession: Lack of independence, collusion with management, dishonesty, not acting in the public interest (Nel Commission 1997:46&50; Clulow 2002:5; Davis 2002:13; Grumet 2002; Tricker 2002:79; More statements on ... 2002/3:16; Chenok 2003; Enron-related indictments ... 2003:9; Kahn 2003; Basson 2004/5:7).

After the Enron scandal there is worldwide a clear tendency to change from self-regulation. Self-regulation is replaced by various forms of regulation,

which include regulation by government bodies and third party oversight bodies.

Regulation of the auditing profession in South Africa was closely examined by the following reports:

- Doctoral thesis entitled *Die verwagtingsgaping ten opsigte van die ouditeursprofessie in die Republiek van Suid-Afrika*, by Gloeck (1993).
- Reports of the Nel Commission (1997:83 & 2002: chapter 18) appointed to investigate the affairs of the Masterbond Group of Companies and investor protection in South Africa.
- A research paper entitled *Seeking a brighter future for auditing in South Africa*, by Gloeck and De Jager (1998).

The auditing profession in South Africa itself made several attempts at restructuring the profession. The Accountancy Profession Bill was published in 1997 (National Treasury 2004b; PAAB Part 1 par B) and the Draft Accountancy Profession Bill, 2001 in 2002 (National Treasury 2004a; Scheepers, par 2.1; National Treasury 2004c).

Since publication of the Draft Accountancy Profession Bill, 2001, confidence in the global financial markets has declined radically as a result of, inter alia, the collapse of Enron and other similar corporate scandals. America and England in particular reacted by adjusting the regulatory framework of auditors. In South Africa the final report of the Nel Commission was published (Nel Commission 2002). In view of all this, the Minister of Finance stated he was not convinced that the Draft Accountancy Profession Bill, 2001 sufficiently addressed the problems inherent in the system (SAICA 2001:2). The Bill was withdrawn and a ministerial panel was appointed in December 2002 to revise the proposed legislation (SAICA 2003/01/21).

The ministerial panel came to the conclusion that "... the existing structure of the PAAB and the powers at its disposal require an overhaul" (National Treasury 2004e, section C, term of reference 1, par 1.4). The Draft Accountancy Profession Bill, 2001 and other relevant legislation affected by the investigation were then revised by the National Treasury, which led to the Draft Auditing Profession Bill which was published in December 2004 (National Treasury 2004d; SAICA 2004/12/02). A year later the APA was signed into legislation in January 2006 and became effective on 1 April 2006 however, the implementation of the Act followed a 9-month phased-in approach (Gloeck 2006).

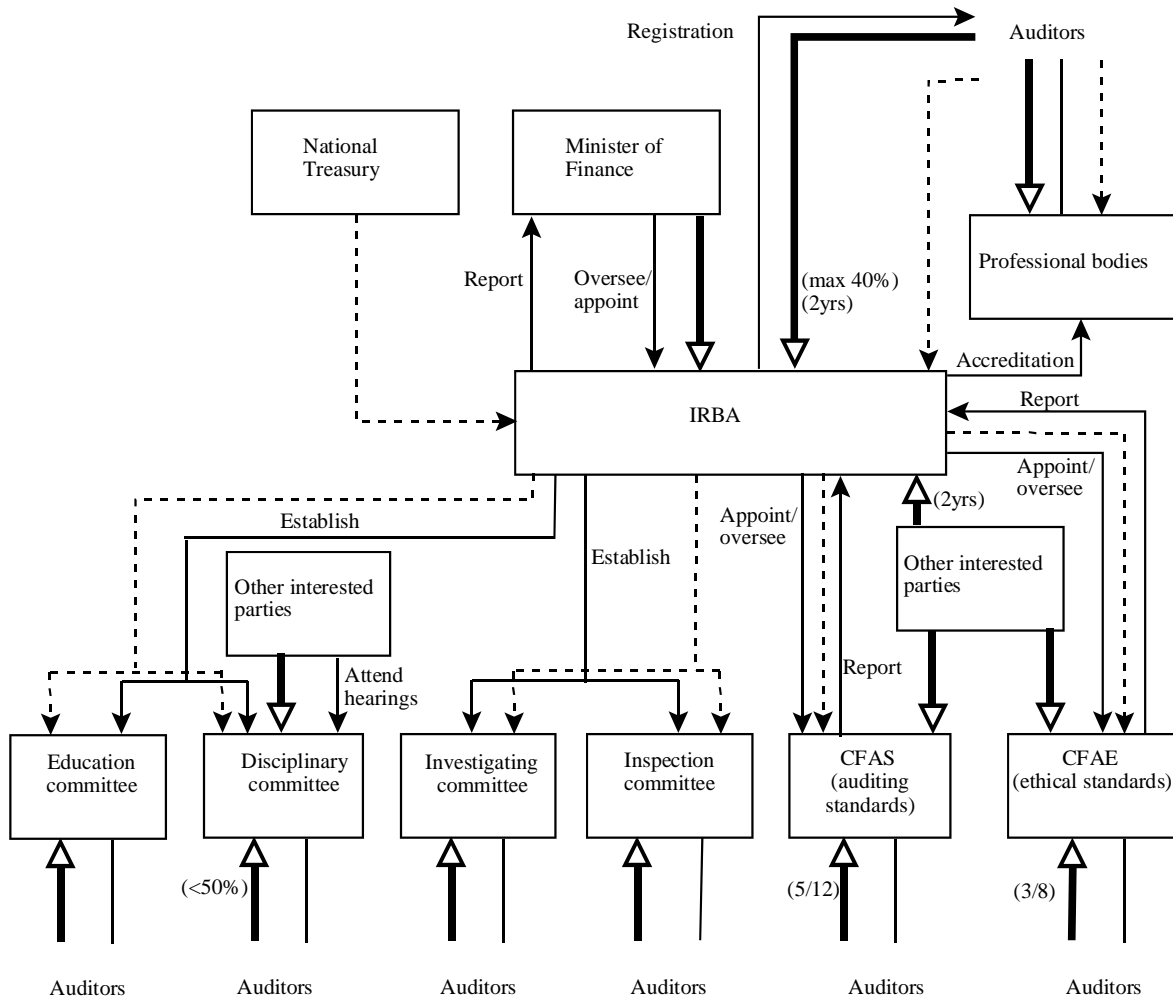
The APA firstly establishes the IRBA which replaced the PAAB (APA sect 3). Secondly it establishes a committee for auditor ethics. Such a committee was not in place and the CFAE has been established by the IRBA in accordance with the APA (APA sect 21). In the third place a committee for auditing standards is established. The AASB of the PAAB performed functions in line with the functions of such a committee. However, the composition of the AASB was somewhat different to what is required by

the APA. The CFAS has been established by the IRBA in accordance with the APA (APA sect 22). The APA also sets out the requirements regarding the composition of a disciplinary committee and the disciplinary process. The composition of the PAAB-appointed committee and the disciplinary process were not in line with the requirements of the APA (APA sect 24, 50 & 51). A new Disciplinary Committee is established by IRBA and new Disciplinary Rules were implemented in June 2007 (IRBA 2007c). The Minister of Finance is responsible

for supervision of the IRBA (APA sect 28) which is responsible, inter alia, for the following: protection of the public interest; prescribing auditing and ethical standards; setting of standards regarding qualifications; disciplinary actions; registration of auditors; accreditation of professional bodies; and practice reviews (APA sect 4, 5, 6 & 7).

See figure 1 for a representation of the regulation of the auditing profession according to the APA.

Figure 1: Regulation of the auditing profession in South Africa (Odendaal 2005:220)



Legend

- Function
- - - - - Financing
- Representing

3 EVALUATION OF THE REGULATION OF THE AUDITING PROFESSION

In the literature, a number of authors have identified factors or elements that are important to a regulatory system. Together, these factors form a framework against which the acceptability of regulation can be measured. The importance of each element is weighed up against the others in order to determine whether the regulation should take place in the public interest.

These factors that are important to a regulatory system will now be described and used as a basis for evaluating the regulation of the auditing profession according to the APA. For the purposes of this article these factors or elements are grouped under the following headings:

Mandate held by the regulator

Description: The mandate held by the regulator is one of the factors that are important to a regulatory system (Bernstein 1955:286; Noll [ed] 1971:37-39; Breyer 1982:354-356; Baldwin & McCrudden 1987:33-35; Gray & Manson 2000:74-75; Baldwin & Cave 1999:78).

The essence of laying claim to a mandate is that the form of regulation concerned is democratically justified. If a system of regulation is authorised by government, which is the dispenser of democratic powers, then it will be respected by society (Baldwin & Cave 1999:78). The scope of the mandate given to the regulator is also important.

The success of regulators should be measured against the degree to which they have complied with the mandate. This may be difficult. In most cases only broad guidelines are provided in a mandate to a regulator. Application of the mandate is therefore left largely to the discretion of the regulator (Baldwin & Cave 1999:78). The regulator's mandate will be reinforced if there is a statutory requirement that it must report to government (see accountability).

An important aspect of the regulator's mandate is whether it has the necessary powers to enforce compliance. The degree to which rules and standards are statutorily enforceable should also be noted.

Evaluation: A statutory body, the IRBA, is established to take responsibility for regulation of the profession (APA sect 3). The IRBA is established by government and therefore has a statutory mandate. Government, through the Minister of Finance, is responsible for supervision of the IRBA (APA sect 28) and the IRBA has to report quarterly to the Minister of Finance on various issues (see accountability). The scope of the mandate given to this regulator is that it is responsible for regulation of the auditing profession.

The CFAE and the CFAS which are responsible for the setting of ethical and auditing standards respectively are established by the IRBA according to legislation (APA sect 21 & 22) and therefore each have a statutory mandate. For its part, the IRBA is

responsible for supervision of the CFAE and the CFAS.

The IRBA has the necessary powers to enforce regulating standards and rules on the parties being regulated, since the IRBA has established an inspection committee to conduct practice reviews and an investigating and a disciplinary committee, in order to carry out their disciplinary duties (APA sect 20(2)). However, the ethical and auditing standards applicable to the auditing profession will not be statutorily enforceable as it is not contained in legislation.

Conclusion: The regulator of the auditing profession has a clear statutory mandate that it is responsible for regulation of the auditing profession. The IRBA has the necessary powers to enforce regulating standards and rules on the parties being regulated.

Structure of the regulator

Description: The structure of the regulator is another factor important to a regulatory system (Bernstein 1955:289-290; Breyer 1982:350-354; Baldwin & McCrudden 1987:181-184; Gray & Manson 2000:597).

The regulator can be dominated by the regulated to such an extent that the interests of these parties, rather than the public interest, are served. Mitnick (1980:40) mentions that the regulator should maintain a balance between the various conflicting interests. There must be a balance between the different interests of those that are regulated, and between the interests of the regulated and the public interest (Page 1987:321).

The structure and composition of the regulator must therefore consider all the parties involved. It is also important that all the parties involved, especially those representing the public interest, should have representatives in the regulatory structure. In that way not only external opinions are taken into account, but society is assured that its interests are being taken care of, and public confidence is thereby improved.

There must be proper external supervision over the regulatory process. The structure of the regulatory body must also be evaluated externally from time to time.

Evaluation: The Minister of Finance is responsible for appointing the members of the IRBA (APA sect 11(2)), while the IRBA is responsible to appoint the members of the CFAE and the CFAS (APA sect 20(3)). Government, represented by the Minister of Finance, as representative of the public interest, is responsible to monitor and review the performance of the IRBA (APA sect 28(2)), but there is no indication whether the structure of the regulatory body will be evaluated from time to time.

The structure and composition of the IRBA, the CFAE and the CFAS are such that various interest groups are represented in the structures of these bodies (APA sect 11, 21(1) & 22(1)). This will take care of the

criticism against the PAAB that virtually all of its members were auditors (National Treasury 2004e, section C, term of reference 1, par 1.12). This should not only help external opinions to be taken into account, it should also reassure society that the public interest is being upheld. Active participation by government and other stakeholders is important to counter the perception of self-regulation and protected "own interests".

Conclusion: Various interested parties are represented in the structure of the statutory regulator of the auditing profession. However, there is no indication whether the structure of the IRBA will be evaluated from time to time.

Competence of the regulator

Description: Another factor of importance to a regulatory system is the competence of the regulator (Bernstein 1955: chapter 4; Breyer 1982:342-345; Page 1987:309; Baldwin & McCrudden 1987:48-50; Baldwin & Cave 1999:80; Gray & Manson 2000:74). Landis (1960:66 in Mitnick 1980:95) stresses the importance of competence as follows: "Good men can make poor laws workable; poor men can wreak havoc with good laws".

It is of utmost importance that the regulators can be trusted to act efficiently and in the public interest. Noll [ed] (1971:43) states the following regarding regulators: "In theory, regulatory commissions are composed of neutral, objective *experts* on the affairs of the regulated industry and on the public interest in the behaviour of the regulated" [emphasis added].

The regulator must be competent in the field being regulated. Some of the functions of a regulator may require expert judgement. This is especially necessary where society's and the individual's interests conflict. It could be difficult for society to judge whether or not the regulator's decision was fair and appropriate. It is therefore essential that there be confidence in the regulator's expertise (Baldwin & Cave 1999:80).

Evaluation: Competence should not be a problem with the IRBA, the CFAE and the CFAS because various interest groups - including auditors who have specialist knowledge of the field being regulated, and community representatives who should have the necessary knowledge of the public interest - are represented in the structures of these bodies. Although a maximum of 40% of IRBA members may be auditors, the minimum number of auditors who may be members is not specified (APA sect 11, 21 & 22). It is stated that members of the IRBA must be competent persons (APA sect 11(2), but no further guidelines are provided.

The sufficiency of funds for canvassing and retaining the services of suitable people to ensure the competence of the regulatory body should not present a problem because the registered auditors and government jointly are responsible for financing the regulator (APA sect 25).

Conclusion: Regarding the competence of the regulator, auditors with specialist knowledge on the field being regulated and representatives of the public who should have the necessary knowledge of the public interest are represented in the structure of the statutory regulator.

Independence of the regulator

Description: Again, independence is also a key feature of an effective regulatory system (Bernstein 1955: chapter 5; Noll [ed] 1971:34; Baldwin & McCrudden 1987:5; Gray & Manson 2000:577 & 596).

Regulation must be conducted by an independent party (government or its agents). The independence of the regulator is especially important in cases where the public interest can be very different from that of the regulated. The independence of the regulator has an influence on the acceptability of the form of regulation. The regulator must not only be independent from those being regulated, but must be seen to be independent. This can only be brought about by external representation in the regulatory structure.

There is often doubt whether the regulator is really independent and acting in the broadest public interest. The regulator may be subject to influences from powerful governing parties, politicians or interest groups in the community so that regulation serves the interests of such parties or sectors rather than the interests of the broader community. The regulator may for instance be susceptible to bribes and would therefore act in its own interest or those of a section of the community (Mitnick 1980:94).

The independence of the regulator could also be questioned if the regulated are responsible for the financing of the regulator. Instead, all the parties involved should be jointly responsible for the financing of the regulator (National Treasury 2004b; PAAB part 1 par C; National Treasury 2004e section B, term of reference 1, par 1.7, 1.15.5). It is no longer appropriate for regulatory bodies to be financed by the parties they regulate. Someone who pays for something has a measure of control over it. Financing of the regulator must be broader based in order to minimise the influence of a particular group. The ministerial panel proposed the principle of shared financing, specifically to change the perception of self-regulation (National Treasury 2004e section B, term of reference 1, par 1.7 & 1.15.5).

Evaluation: Various interest groups are represented in the structure of the IRBA, but up to 40% of its members may be auditors (APA sect 11(4)). This may cause this body still to be regarded as not independent because 40% represents a unified bloc against which the other, diverse interest groups may not be able to mount a unified counter position. Because of its composition it is conceivable that the IRBA could be effectively controlled by the auditing profession, with the result that the public interest may not be served - which was the case with the PAAB because the majority of its members were from the

auditing profession (National Treasury 2004e section C, term of reference 1, par 1.12). Since government is responsible for supervision of the IRBA (APA sect 28) and the Accountant General is the Minister's representative to the IRBA (IRBA 2007d), this ought to contribute to some degree to the independence of the body. The members of the IRBA are appointed by the Minister of Finance for a maximum period of two years (APA sect 12(1)), which should also contribute somewhat to the independence, and to the perception of independence, of the regulator of the auditing profession.

The IRBA is financed by the auditing profession by way of registration, licence and practice review fees (the cost of practice reviews are recovered from the auditors concerned) and by government through moneys appropriated for this purpose by parliament (APA sect 25). During the 2007 financial year the IRBA received about 30% (approximately 11 million rand) funding of its total budget from National Treasury specifically to assist with the implementation of the APA. The balance of their funding came mainly from the profession by way of registration, licence and practice review fees (Hoosain 2007). This may contribute to the perception that this body is independent - which happened not to be the case with the PAAB because it was financed fully by the auditing profession (National Treasury 2004e section C, term of reference 1, par 1.13). However, of the twenty-two independent audit regulators who are part of the IFIAR the majority are funded mainly by their governments. Some of them levy registration fees for auditors or firms, but this comprises 5-10% of their total revenue. The balance is funded by government (Hoosain 2007).

Various interest groups are represented in the structures of the CFAE and the CFAS, but a maximum of approximately 40% of the members (3 of the 8 members in the case of the CFAE (APA sect 21(1)) and 5 of the 12 members in the case of the CFAS (APA sect 22(1))) may be auditors. This, too, may cause these bodies to be seen as lacking independence since the auditing profession could muster a majority bloc against the other members. Based on their composition, the CFAE and the CFAS could be controlled by the auditing profession with the result that the public interest is not served. The CFAE and the CFAS are funded by the IRBA (APA sect 20(4)), which however may lead to the perception that these bodies are to some degree independent because the IRBA is in turn funded by the auditing profession and by government.

Conclusion: The independence of the regulator of the auditing profession where 40% of the members of the statutory regulator can be auditors may cause this body still to be regarded as effectively controlled by the auditing profession, with the result that the public interest may not be served. However, the following will contribute to some degree to the independence and to the perception of independence of the regulator of the auditing profession: government supervision of the IRBA, the Minister of Finance has a representative to the IRBA, the members of the IRBA are appointed by the Minister of Finance for a

maximum period of two years and the IRBA is financed by the auditing profession and by government, although mainly by the auditing profession.

Efficiency of the regulator

Description: A fifth factor of importance to a regulatory system is the efficiency of the regulator (Bernstein 1955:289-290; Brown-John 1981:235; Breyer 1982:346-350; Page 1987:305-309; Baldwin & McCrudden 1987:50-54; Baldwin & Cave 1999:81-82; Irish Government Publications 2000:95).

The mandate of the regulator must be carried out in the most economical and efficient manner. However, it is difficult in many cases to measure effectiveness because a mandate does not always spell out clear objectives. It is also problematic to assert that a particular method of regulation will deliver better results than alternative methods which have not yet been applied in that specific field (Baldwin & Cave 1999:81).

There may also be conflict between efficiency and the attainment of social objectives. Often the main objective of a regulator is more than to be merely economically efficient. It may also be required to fulfil social responsibilities (Baldwin & Cave 1999:81-82). Regulatory objectives are often "mixed and include ... varied rationales, economic and social" (Prosser in Baldwin & Cave 1999:82).

In cases where the regulator is subject to much bureaucracy, this may have an influence on its efficiency. The same applies where it is subject to political influences.

The ability of the regulator to adapt to change must also be considered because regulation is a dynamic process. Another important aspect to be taken into account is whether regulation will stimulate progress. Without progress no industry can be internationally competitive (Page 1987:305-306 & 309; Baldwin & Cave 1999:65).

Evaluation: The IRBA has to submit an annual budget and a strategic plan to the Minister of Finance in terms of the PFMA (APA sect 26). As a public entity the IRBA is required to report to the Minister of Finance according to the PFMA (APA sect 28(1)). According to the Treasury Regulations (National Treasury 2005) issued in terms of the PFMA the IRBA's corporate plan must cover a period of three years and must include inter alia strategic objectives and outcomes, key performance measures and indicators for assessing its performance in delivering the desired outcomes and objectives (sect 29.1.1). In its annual report the IRBA must disclose the entity's strategic objectives and outcomes as agreed on by the Minister of Finance, the key performance measures and indicators for assessing the entity's performance in delivering the desired outcomes and objectives and the entity's actual performance against the strategic objectives and outcomes (sect 28.2.2).

The IRBA, CFAE and CFAS are statutory bodies. They would not be subject to much bureaucracy, which would allow them to function cost-effectively.

However, the IRBA, CFAE and CFAS may encounter problems in fulfilling their social responsibility as guardian of the public interest because of their lack of independence (since approximately 40% of their members may be from the auditing profession and the funding is not substantially independent from the profession).

The CFAE and the CFAS will be financed by the IRBA, and the auditing profession and government will be responsible for financing the IRBA. This should ensure that there are sufficient resources to carry out their delegated tasks.

The composition and structure of the regulatory bodies should be able to adapt to changing circumstances quite easily.

Conclusion: The IRBA has to have strategic objectives and outcomes as agreed on by the Minister of Finance, key performance measures and indicators for assessing its performance in delivering the desired outcomes and objectives and its actual performance against the strategic objectives and outcomes.

The statutory regulator is a statutory body that should not be liable to much bureaucracy, which most probably should result that it functions economically efficient.

The statutory regulator can as a result of the fact that approximately 40% of the members can be auditors (and the auditing profession is mainly responsible for funding the regulator) experience problems to fulfil their social responsibility as guardians of the public interest.

Accountability of the regulator

Description: Next, accountability appears to be a key element in the regulatory process (Brown-John 1981:156 & 216; Breyer 1982:354-356; Page 1987:318-321; Baldwin & McCrudden 1987:35-45 & 318-321; Ogus 1994:111; Baldwin & Cave 1999:78-79 & chapter 21). The Lambert Royal Commission on Financial Management and Accountability (1979:21 in Brown-John 1981:216) defines accountability as "... the liability assumed by all those who exercise authority to account for the manner in which they have fulfilled responsibilities entrusted to them".

Regulators should give proper account of the way in which they fulfil their mandate, in order to ensure that the public interest has been taken into account. Reporting must be done to government as representative of the public interest. Government must see to it that the agent (regulator) acted in the way agreed upon. Government has a responsibility to society to ensure that the agent to whom the function of regulation had been delegated is monitored.

By delegating the regulatory function to one of its agents, government cannot deny or evade its

responsibility for regulation. Proper supervision and control over the agent responsible for regulation is of the utmost importance (Page 1987:318).

If the regulator is accountable to an entity other than parliament or similar elected body, it could be said that accountability is owed to a non-representative body. In cases where accountability and control is exercised by the courts, for instance, their expertise in a particular field may be questioned (Baldwin & Cave 1999:78-79).

What is important in accountability is that the body being reported to must possess the necessary resources (time and expertise) to monitor adherence to the public interest and must not be subject to influences from partisan private interests.

The degree of accountability is another aspect to be considered (Baldwin & Cave 1999:79).

Evaluation: There is a statutory requirement for the CFAE and the CFAS to account to the IRBA on the way in which they carry out their mandate. There is also a statutory requirement for the IRBA to report to government, on the way in which it had carried out its mandate to ensure that the public interest is served. As a public entity the IRBA is required to report to the Minister of Finance according to the PFMA (APA sect 28(1)). According to the Treasury Regulations (National Treasury 2005) issued in terms of the PFMA the IRBA has to report quarterly on the extent of compliance with the PFMA and regulations (sect 26.1.2). The IRBA has to establish procedures for quarterly reporting to the Minister of Finance in order to facilitate effective performance monitoring, evaluation and corrective action. In its annual report the IRBA must disclose the entity's strategic objectives and outcomes as agreed on by the Minister of Finance, the key performance measures and indicators for assessing the entity's performance in delivering the desired outcomes and objectives and the entity's actual performance against the strategic objectives and outcomes (sect 28.2.2). Its annual budget must include a projection of revenue, expenditure and borrowings (sect 29.4.1) and it has to submit annually a strategic plan to the Minister of Finance (sect 30.1.1). Its corporate plans have to cover a period of three years (sect 29.1.1). Further, the IRBA has to establish an audit committee and the majority of the members have to be non-executive members who are financially literate. The audit committee must report on various issues (sect 27.1).

Conclusion: The statutory regulator has to report on the way in which it had carried out its mandate to ensure that the public interest is served. The IRBA has to submit an annual budget, strategic plan and report with the entity's strategic objectives and outcomes as agreed on by the Minister of Finance, the key performance measures and indicators for assessing the entity's performance in delivering the desired outcomes and objectives and the entity's actual performance against the strategic objectives and outcomes. It has to report quarterly to the Minister of Finance on the extent of compliance with the PFMA and regulations.

Processes and procedures of the regulator

Description: Another factor of importance to the regulatory system is the processes and procedures of the regulator (Bernstein 1955:290-291; Breyer 1982:345-350; Sutton 1984:91-93; Page 1987:313 & 320-321; Baldwin & McCrudden 1987:45-48; Baldwin & Cave 1999:79; Gray & Manson 2000:597).

The processes and procedures of the regulator must be fair, accessible and open if they are to enjoy public support (Baldwin & Cave 1999:79). In democratic dispensations all social decisions must be taken in an open, transparent and accountable manner (Mitchell 1975:76). Regulation must be conducted as openly as possible to serve as proof of fairness and effectiveness (Page 1987:320). To that end there must be provision for external involvement in the regulatory processes and procedures in order to enhance their credibility and validity. Decisions on regulation and the regulatory processes must provide for participation from the community, consumers and other interested parties. Differences may occur over the appropriate measure of participation by external parties. On the other hand, one should guard against the situation where the more participants there are in the decision-making process, the less effective the process becomes - which could lead to stagnation of the regulatory process (Baldwin & Cave 1999:79).

Evaluation: The principle processes and procedures of IRBA are dealt with as follow:

Firstly, education, training and professional development. In May 2007 IRBA issued an accreditation model for institutional and programme accreditation (IRBA 2007a). The model sets out, inter alia, the requirements for accreditation. All professional bodies should have applied for accreditation before the end of September 2007 (Olivier 2007). The IRBA also has implemented a Continuing Professional Development policy including reporting requirements on 1 April 2007 (IRBA 2007b).

Secondly, standards. The IRBA established the CFAE and the CFAS and is responsible, inter alia, for financing and supervising them. The CFAE is in the process to develop a new Code of Professional Conduct taking into consideration the IFAC Code and what other countries have done. The Code will be principles based with additional guidance (Hoosain 2007). The CAG is an independent advisory group to the CFAS to enhance the transparency and accountability of the auditing standard setting function (Hoosain 2007). All registered auditors are required to report certain irregularities to the IRBA. The IRBA issued a guide on Reportable Irregularities on 30 June 2006 (IRBA 2007f).

Thirdly, practice reviews. The IRBA established an inspection committee which comprises 11 people who serve on a voluntary basis for a maximum period of 6 years. However the inspection committee can consist only of auditors. This committee is responsible to review practitioners and firms (Hoosain 2007). The

committee published its first public report on the reviews of the Big Four audit firms for the period February to November 2006 on 28 March 2007 (IRBA 2007e).

In the fourth place, registration and disciplinary. The IRBA prescribe minimum qualifications, competency standards and requirements for registration of auditors. The disciplinary committee consists of a minority of auditors (chaired by a retired judge or senior advocate), but the investigating committee (although it must include individuals with significant legal experience) can consist only of auditors. New Disciplinary Rules were issued on 7 June 2007 which brings the disciplinary process and procedures in line with the requirements of the APA (IRBA 2007c). Hearings before the disciplinary committee are open to the public, making the processes and procedures more open and transparent.

The structure and composition of the IRBA, the CFAE and the CFAS will be such that various interest groups will be represented on them. It is stipulated that their members and staff ascribe to the core values of, inter alia, independence, transparency and accountability (Hoosain 2007).

Conclusion: The processes and procedures of the regulation according to the APA are open and transparent. The external involvement in the processes and procedures of regulation - such as ethical and auditing standards and disciplining, adds to their credibility and validity.

As auditing is an internationally phenomenon the practices and policies in other countries can not be ignored. To be international competitive and to advance international investment in South Africa, the regulation of the auditing profession in South Africa should comply with international tendencies.

Worldwide self-regulation is replaced by various forms of regulation, which include regulation by government bodies and third party oversight bodies. See table 1 for a comparison of the regulation of the auditing profession in South Africa with the regulation of the profession in five English speaking countries with which the auditing profession in South Africa has historical and professional ties - Ireland, England, America, Australia and Canada.

The statutory body, the IRBA, established to be responsible for the regulation of the auditing profession in South Africa corresponds with Ireland, England, America, Australia and Canada where various forms of oversight bodies were established to be responsible for the regulation of the auditing profession.

Regarding the *mandate* of the regulator of the auditing profession, South Africa corresponds with Ireland, England, America, Australia and Canada where the statutory regulator has a clear mandate.

Table 1: Comparison of the regulation of the auditing profession in South Africa with Ireland, England, America, Australia and Canada (Odendaal 2005:270)

	South Africa	Ireland	England	America	Australia	Canada
Type of regulation and statutory body	Co regulatory system - self-regulation and statutory regulation (IRBA) subject to government review	Self-regulation subject to review by a statutory body (IAASA)	Co regulatory system - self-regulation and statutory regulation (FRC)	Self-regulation (auditors of non public companies) and statutory regulation (PCAOB) (auditors of public companies) subject to review by the SEC	Co regulatory system - self-regulation and statutory regulation (FRC)	Co regulatory system - self-regulation and statutory review (CPAB) (auditors of public companies)
Structure of the statutory body	Various interested parties (maximum 40% of the members can be auditors)	Various interested parties (maximum 2 of the 13 members can be auditors)	Various interested parties (maximum 30 members who are representatives of business, investing, professional and other communities with an interest in corporate reporting and control)	Various interested parties (2 members must be auditors and 3 members may not be auditors)	Various interested parties (members are appointed with reference to nominations by key interest groups and independent of the interested groups and are representatives of business, professional bodies, government and regulatory bodies)	Various interested parties (maximum 4 of the 11 members can be auditors)
Financing of the statutory body	Government and auditing profession	Government and auditing profession	Government, listed companies and auditing profession	Public companies and auditors of public companies	Government, auditing profession and other interested parties	Public companies
Accountability of the statutory body	To government on activities and if objectives by statutory regulator, committees and boards are complied with	None	None	To the SEC; information regarding auditors to the public	To government on compliance with independence requirements and quality reviews	To the public

The *structure* of the regulator of the auditing profession in South Africa corresponds with Ireland, England, America, Australia and Canada where various interested parties are represented in the statutory regulator.

Regarding the *competence* of the regulator, South Africa corresponds with Ireland, England, America, Australia and Canada where auditors with specialist knowledge on the field being regulated and representatives of the public who should have the necessary knowledge of the public interest are represented in the structure of the regulatory body.

The *independence* of the regulator of the auditing profession in South Africa corresponds to some degree with America where 40% of the members of the statutory regulator can be auditors. In Canada approximately 36% of the members can be auditors and 15% in Ireland.

In England and Australia the members of the statutory regulator are representative of various interested parties. In South Africa as in Ireland, England, America and Australia the auditing profession is jointly responsible for financing the statutory regulator

and its processes and procedures, although only the IRBA are funded mainly by the auditing profession.

The *efficiency* of the regulator in South Africa corresponds with Ireland, England, America, Australia and Canada where the statutory regulators are statutory bodies with strategic objectives and outcomes. These bodies should not be liable to much bureaucracy, which most probably should result that they function economically efficient.

The statutory regulator in South Africa, and probably also in America and Canada, can as a result of the fact that approximately 40% of the members can be auditors (only in South Africa the auditing profession is mainly responsible for funding the regulator) experience problems to fulfil their social responsibility as guardians of the public interest.

The *accountability* of the regulator in South Africa corresponds with America and Australia where the statutory regulator should report to government or a government agency as representatives of the public.

4 SUMMARY

This article has evaluated the regulation of the auditing profession in South Africa in terms of widely accepted key factors that are important to a regulatory system with reference to the regulation of the profession in five English speaking countries with which the South African auditing profession has historical and professional ties.

First, the background to the APA is examined. Then, the factors that are important to a regulatory system were described and used as a basis for evaluating the regulation of the auditing profession with reference to the regulation of the profession in Ireland, England, America, Australia and Canada. For the purposes of this article those factors or elements were grouped under the following headings: mandate held by the regulator; structure of the regulator; competence of the regulator; independence of the regulator; efficiency of the regulator; accountability of the regulator; processes and procedures of the regulator.

The regulation of the auditing profession in South Africa to a large degree addresses those factors that are important to a regulatory system. The fundamental reason for this failure to adequately address all key factors required for a successful regulatory system can be traced to the composition of the regulator and its related bodies. Other aspects of the regulation of the auditing profession that do not fulfil the defining requirements of a good regulatory system are:

- There is no provision for the structure of regulation to be evaluated periodically.
- The investigating committee and the inspection committee may have no external representation.

Regarding the mandate, structure and competence of the regulator, the regulation in South Africa corresponds with the regulation in Ireland, England, America, Australia and Canada where various forms of oversight bodies were established and where various interested parties are represented in the regulatory body.

The fact that 40% of the members of the statutory regulator in South Africa can be auditors agree to some degree with the regulation in America, Canada, England and Australia, although only 15% of the members can be auditors in Ireland. In South Africa

as in Ireland, England, America and Australia the auditing profession is jointly responsible for financing the statutory regulator and its processes and procedures. The perceived independence will be enhanced by the fact that the IRBA will be partially funded by government, with the regulator in turn responsible for financing the related committees. However, only the IRBA is funded mainly by the auditing profession. Thus, regarding the independence and the efficiency of the regulator (and its procedures and processes), the regulation of the auditing profession in South Africa agree only to a certain extent with the regulation of the auditing profession in Ireland, England, America, Australia and Canada.

Enhancing the perceived independence of the regulator of the auditing profession in South Africa, government is responsible for supervision of the IRBA, the Accountant General is the Minister's representative to the IRBA and the members are appointed by the Minister of Finance for a maximum period of two years.

Regarding the accountability of the regulator, the regulation in South Africa agrees with the regulation in America and Australia, where the statutory regulator reports to the government or a government agency, while only in Canada reporting is done to the public.

7 CONCLUSION

It appears that significant progress has been made and that those factors that are important to a regulatory system are to a large degree addressed by the regulation of the auditing profession in South Africa. Although there is a possibility that the public perception may prevail that the auditing profession controls its own regulation and that the regulator will not be regarded as independent of the auditing profession because the IRBA can effectively be controlled by the profession. However, the regulation of the auditing profession according to the APA should contribute to restore confidence in the auditing profession. The regulation of the auditing profession in South Africa is to a large degree in line with the regulation of the auditing profession worldwide. However the funding of the regulator is not in line with international best practice, which is to be substantially independent from the profession.

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