



# THIRD PARTY ACCESS TO CLIENT INFORMATION (WORKING PAPERS)

**PRESENTED BY:**  
NESTENE CLAUSEN (CA)SA RA  
THE AUDIT PRO

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# THIRD PARTY ACCESS TO CLIENT INFORMATION (WORKING PAPERS)

Presenter: Nestene Clausen (CA)SA RA

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# Presenter

## **Nestene Clausen CA(SA) RA**

- M. Com Chartered Accountancy (Auditing)
- Lecturing experience: NWU, UCT, Damelin
- Founder: The Audit Pro
- Founder: Born2Count
- Speaker

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# Course Outline

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## 1. Introduction

- a. Importance of the topic
- b. Risk Examples
- c. Explanation of high risk associated with access to working papers
- d. Available guidance

## 2. What can be required?

- a. Definitions of working papers/ audit information/ relevant material
- b. Confidentiality
- c. Responsibility for requests for access to working papers
- d. Policies and Procedures

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## 3. What should the auditor do when access is requested?

a. Three categories

b. By Law

i. Subpeona

ii. IRBA

iii. SARS

iv. SAPS

v. AGSA

vi. PAIA

vii. Companies Act

c. By reporting standards

i. Group auditor

ii. ISAE 3000

iii. Successor auditor

d. By contractual obligation

i. Joint auditor

ii. Third party

e. At the discretion of auditor



# LEARNING OBJECTIVES

## **At the end of the webinar you will have knowledge of:**

- How to maintain the client's right to confidentiality;
- Their responsibility for granting third party access to their clients' information;
- Circumstances where access to clients' information is required by law;
- Circumstances where access to clients' information is in compliance with reporting standards; and
- Potential risks when granting access to clients' information to third parties.

# Quote Inspiration

*If it wasn't hard everyone  
would do it. It's the hard that  
makes it great.*

**- Anon**

# 1A IMPORTANCE OF TOPIC

## Court Cases:

- BP Canada Energy Company v Minister of National Revenue (CPA of Canada intervening) 2017 FCA 61
  - the Court had to consider a lower court judgment in terms of which BP Canada Energy Company (BP) had been ordered to provide unredacted copies of its 'tax account working papers' to an auditor conducting a tax audit.
  - The court therefore concluded that the Federal Court judge erred in finding that the regulation afforded the Minister unrestricted access to tax account working papers. The policy actually recorded the constraint that is imposed by law on the exercise of the powers.

# 1A IMPORTANCE OF TOPIC

## Court Cases:

- BP Canada Energy Company v Minister of National Revenue (CPA of Canada intervening) 2017 FCA 61 (continued)
  - This is a welcome judgment that may well have relevance to the exercise of powers by SARS under section 46 of the Tax Administration Act, 2011 (the TAA).
  - Read More in the Course Material - SAICA (2648. SARS right to information - October 2017 - Issue 217)

# 1A IMPORTANCE OF TOPIC

## **Section 46(l) of the Tax Administration Act:**

- ‘SARS may, for the purposes of the administration of a tax Act in relation to a taxpayer, whether identified by name or otherwise objectively identifiable, require the taxpayer or another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires.’

## **Section 1 of the Tax Administration Act:**

- “relevant material” means any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act...’



# 1B RISK EXAMPLES

**Auditor grants access to working papers to client**

# 1B RISK EXAMPLES

## **Auditor grants access to working papers to client**

Client uses working papers as evidence to support a claim against auditor for damages allegedly suffered by client...

# 1B RISK EXAMPLES

**Auditor grants access to working papers to prospective investor/ lender/ purchaser of client**

# 1B RISK EXAMPLES

## **Auditor grants access to working papers to prospective investor/ lender/ purchaser of client**

Third parties rely on working papers to reach conclusion regarding intended transaction. Client incurs losses due to cancellation of transaction. Client claims compensation from auditor.

# 1B RISK EXAMPLES

## **Auditor grants access to working papers to prospective investor/ lender/ purchaser of client**

Third parties rely on working papers to reach conclusion regarding intended transaction. Client incurs losses due to cancellation of transaction. Client claims compensation from auditor.

Third parties rely on working papers to reach conclusion regarding intended transaction. Third parties incur losses due to implementation of transaction. Third parties claim compensation from auditor.



# 1C HIGH RISK

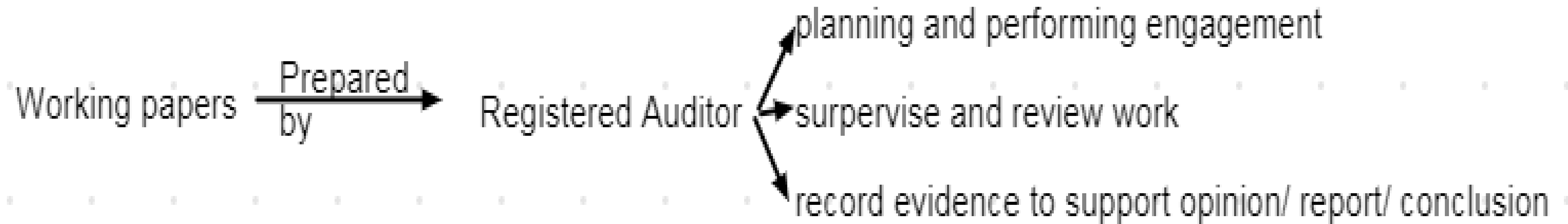
**Thus ALL requests to access to working papers should be regarded as:**

**HIGH RISK!!!**

**Therefore auditor should:**

- Gather information = Understand reason for request
  - Have/ obtain a general knowledge with regards to rights & obligations for different circumstances
- Assess risks
- Implement Safeguards (preventative = policies and procedures ISQCI)
- Engage consultations/ seek legal advice

# 1C HIGH RISK



It may therefore not be appropriate for third parties, whose objectives and requirements might be different from those of the auditor, to rely on working papers to obtain information that they might require.

# 1C HIGH RISK

Third parties who wish to obtain information should request from client directly

Circumstances may arise where information cannot be obtained from the client

may be sought from the auditor.

# D AVAILABLE GUIDANCE

This is where  
the guide  
comes in!

- IRBA Guide (2018 - revised) - Access to Working Papers
- SARS Guide - Access to Audit Files
- SAICA FAQ (2017) 2648. SARS right to information

Applies  
when required to  
provide access to

client

another auditor

third parties

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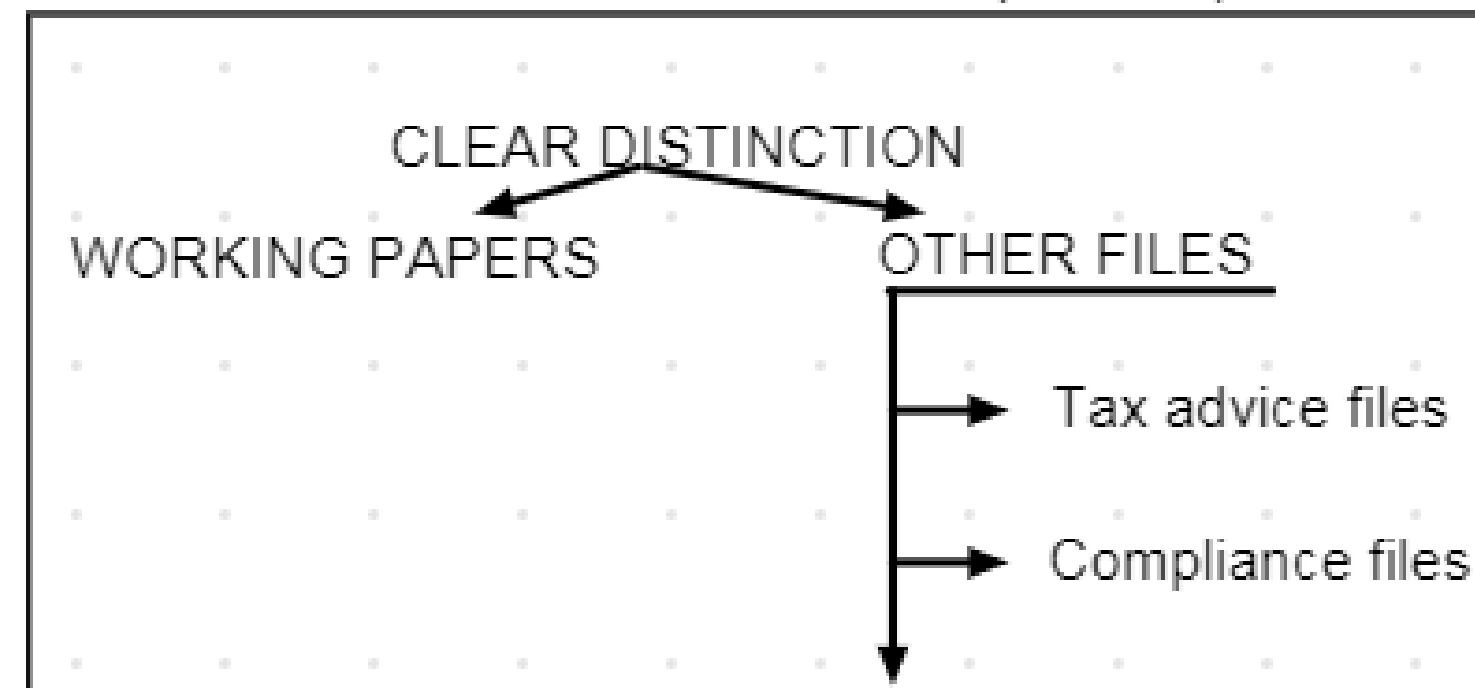
## 2. What can be required?

- a. Definitions of working papers/ audit documentation/ relevant material
- b. Confidentiality
- c. Responsibility for requests for access to working papers
- d. Policies and Procedures

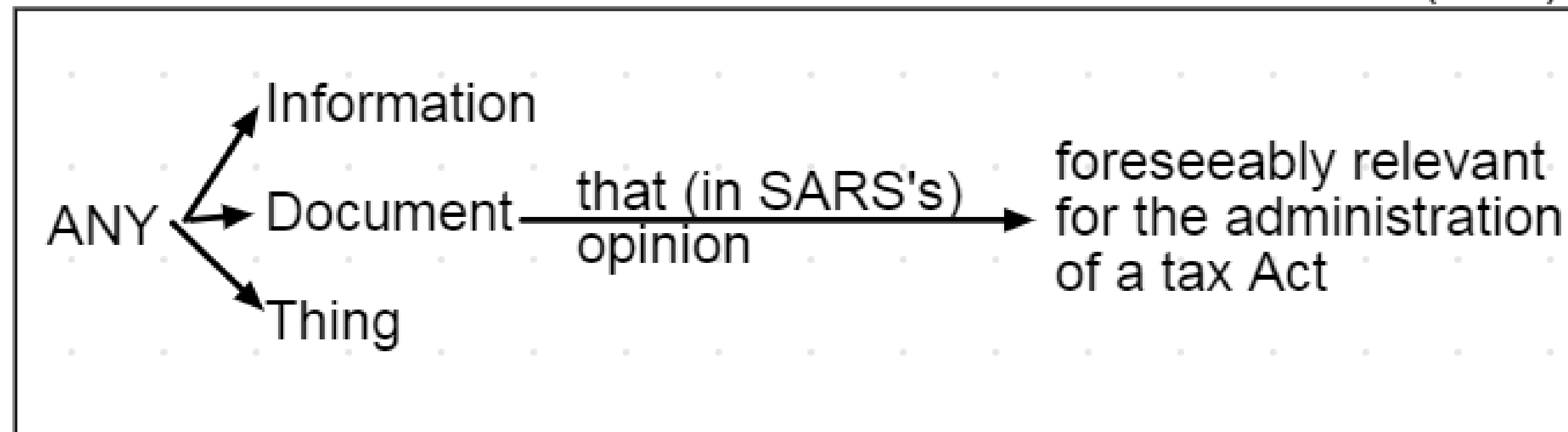
# 2A DEFINITIONS

## WHAT

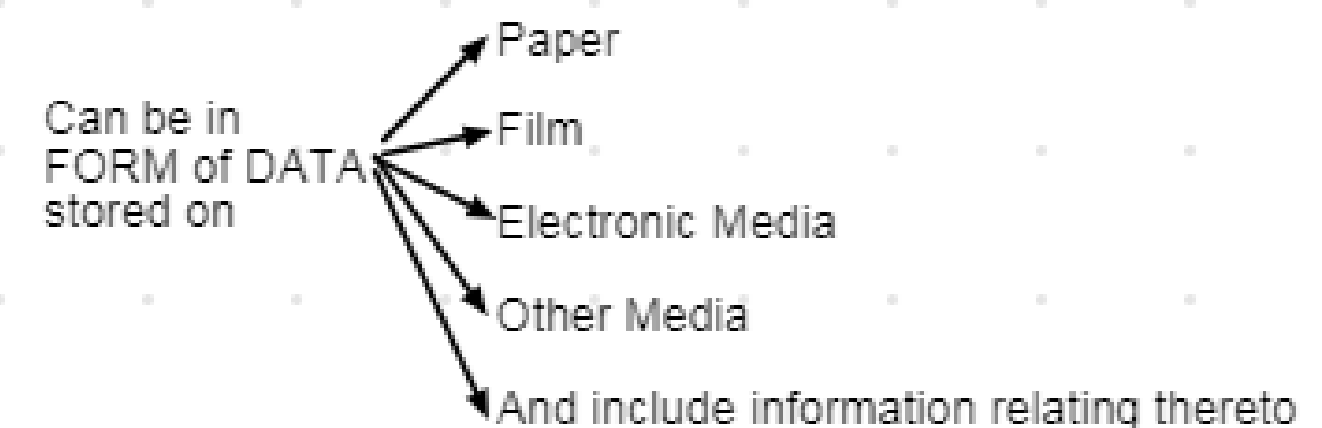
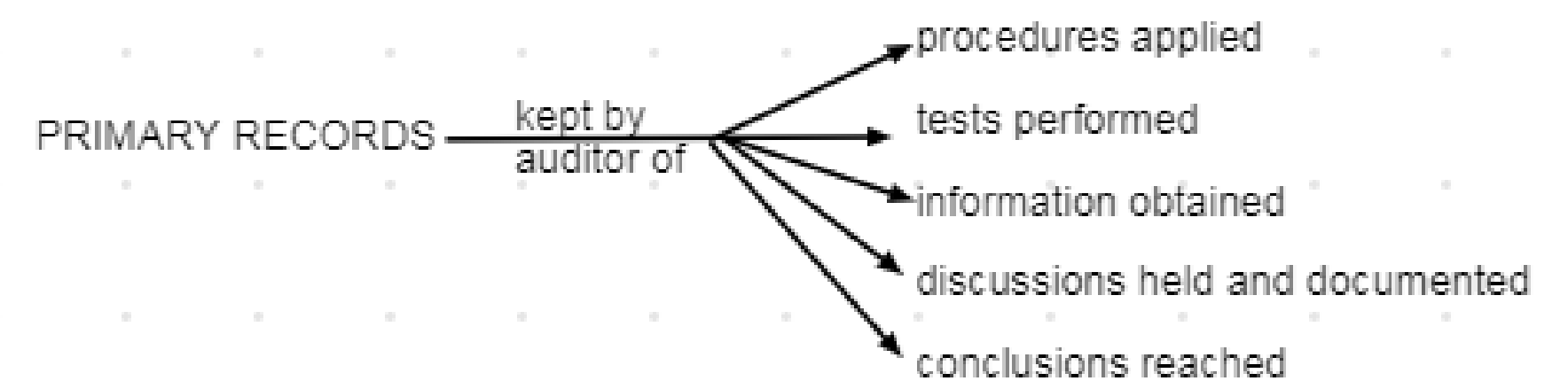
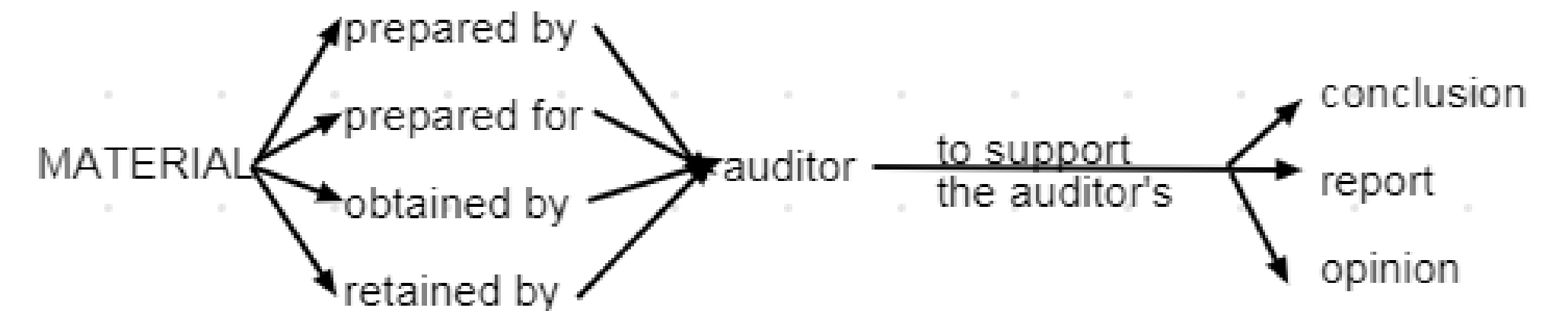
### AUDIT DOCUMENTATION (ISA 230)



### RELEVANT MATERIAL (TAA)



### WORKING PAPERS (IRBA GUIDE)



The property solely of the firm



# 2B CONFIDENTIALITY

## CONFIDENTIALITY OF CLIENT INFORMATION

Be aware that working papers contain CLIENT INFORMATION obtained by the AUDITOR from the client in the ORDINARY COURSE of performing the auditor's professional functions.

AUDITOR may only disclose CONFIDENTIAL INFORMATION where the disclosure is COMPELLED or ALLOWED by LAW.

Section 140 CPC (...shall not disclose without proper and specific AUTHORITY, unless there is a LEGAL or PROFESSIONAL RIGHT or DUTY to disclose.

Section 213 of the Companies Act, 71 of 2008 PROHIBITS the auditor from DISCLOSING the client's confidential information.

Auditor should regard this as a HIGH RISK ACTIVITY.

# 2C WHO IS RESPONSIBLE?

## WHO IS RESPONSIBLE?

Auditor responsible for the engagement

OR

Assigned by policies and procedures

OR

AGSA work - only AGSA (Section 50 of PAA)

# 2D POLICIES

## Policies and Procedures

ISQC1 - A firm shall establish **POLICIES AND PROCEDURES** designed to maintain the confidentiality, safe custody, integrity, accessibility and reliability of documentation.

# 2D POLICIES

## ESTABLISHING POLICIES AND PROCEDURES REGARDING ACCESS TO WORKING PAPERS

The Protection of Personal Information Act, 4 of 2013 (POPI) seeks to ensure that personal information is processed responsibly.

When auditors provide access to working papers, they should:

Always comply with the requirements of POPI

Ensure POPI is sufficiently addressed in engagement letter.

Establish and maintain the appropriate security measures referred to in s19 of POPI when releasing working papers.

Step 1 = Risk Identification; Step 2 = Implement Policies & Procedures to lower risk to acceptable level

# 2D POLICIES

## EXAMPLES OF POLICIES AND PROCEDURES

Assign responsibility to "Risk Management Partner" or "Engagement Partner"

Stipulate procedures to be followed in various circumstances when access is required

Stipulate terms to be met before access is granted

Stipulate circumstances under which the firm can elect to grant or deny access to working papers

Prescribe templates for obtaining authorisation and acknowledgement letters when access is granted

Stipulate whom letters will be provided to

Stipulate timing of when letters will be obtained

Stipulate types of working papers that access will be granted to (for example those that contain factual and relevant information)

# 2D POLICIES

Prescribe a reviewer to review working papers to ensure they are in a condition suitable for review by a third party

Determine the format in which working papers will be provided (should not put confidentiality of firm's methodologies or information of other clients at risk)

Prescribe how photocopies will be provided (for example cover audit comments, legends, tickmarks, etc before copying)

Prescribe discussions to be had between predecessor and successor auditor to arrive at an agreement of what is reasonable to copy

Restrict the duration of the period for which access will be granted to a reasonable duration.

Restrict location at which access is to be provided (usually auditor's premises, but be mindful of confidentiality of other clients' information.

Reasonable cost recovery stipulations (for example copying of documents, time spent on retrieving and extracting information)

Stipulate applicable legal and professional requirements to consider & set out procedures that will achieve compliance



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i. Joint auditor

ii. Third party

e. At the discretion of auditor

# THREE CATEGORIES

Could be required:

By Law

- AGSA protected i.t.o. s(18(3) & 18(4) PAA) STATUTORY OBLIGATION TO GUARD AGSA
- IRBA i.t.o. APA (inspections, investigations and disciplinary hearings)
- SARS i.t.o. Section 46 of the Tax Administration Act, 28 of 2011 (TAA), Sections 101 and 101(A) read with Section 4 of the Customs and Excise Act, 91 of 1964 (Customs Act)

By ISA's/ ISAE's/ CPC/ Other Auditing Pronouncements

- Group auditor
- ISAE 3000
- Successor auditor

By Contractual Obligation

- Joint auditor
- Third party
- Other

# Scenario 1 Access at Discretion

## Considerations where access is at the DISCRETION OF THE AUDITOR

---

- Confidentiality of client information (get written permission of client) - list of requirements p14 of IRBA guide
- Duty of care to third parties (make it clear that it would be inappropriate to place reliance on working papers for purposes other than those for which they were created.
- Limitation on reliance by third parties (hold harmless letter & disclaimer letter) list of requirements on p15 of IRBA guide

**Auditors SHOULD NOT provide access to working papers unless they are LEGALLY required to do so.**

# Scenario 2: Successor auditor

EXAMPLE  
↓  
WHEN A CLIENT CHANGES AUDITORS

Successor Auditor

Required to ascertain whether there are any professional or other reasons not to accept the engagement.

Inquire from prospective client if prior auditor has permission to provide information

Obtain written permission from client to communicate with predecessor

If client refuses/ fails to grant permission  
DECLINE the appointment

Unless **EXCEPTIONAL CIRCUMSTANCES**  
information obtained by other means

# Scenario 2: Successor Auditor

If accepts  
the engagements



Develop overall audit strategy and audit plan to obtain SUFFICIENT APPROPRIATE EVIDENCE regarding OPENING BALANCES and APPROPRIATENESS AND CONSISTENCY OF ACCOUNTING POLICIES.

**MAY REQUEST ACCESS TO WORKING PAPERS FOR THIS PURPOSE.**



# Scenario 2: Successor Auditor

## Predecessor Auditor

Extent to which the auditor can discuss the client's affairs **DEPEND** on the client's permission and legal or ethical requirements.

**DO NOT** volunteer information about client's affairs without **SPECIFIC INSTRUCTION** from the client

**Even if client refuses/ fails to grant permission UNLESS prohibited by law or regulation.**

# Scenario 2: Successor Auditor

Ascertains from proposed successor whether client granted permission to communicate with existing auditor and further considers:

Whether any parties interests could be harmed by disclosure (incl third parties)

Whether relevant informations sought is known and substantiated (as far as reasonably possible). If situation involves unsubstantiated facts, incomplete info, unsubstantiated conclusions, professional judgement should be used in determining type of disclosure.

# Scenario 2: Successor Auditor

Type of communication

Appropriate Recipients

Take care that no more information than is strictly necessary is made available and provide information "honestly and unambiguously."

# Scenario 3: Group Engagements

ISA 600 - Requires group engagement partner to have access to RELEVANT Working Papers of Component Auditors of Significant Components in order to obtain sufficient appropriate evidence at group level.

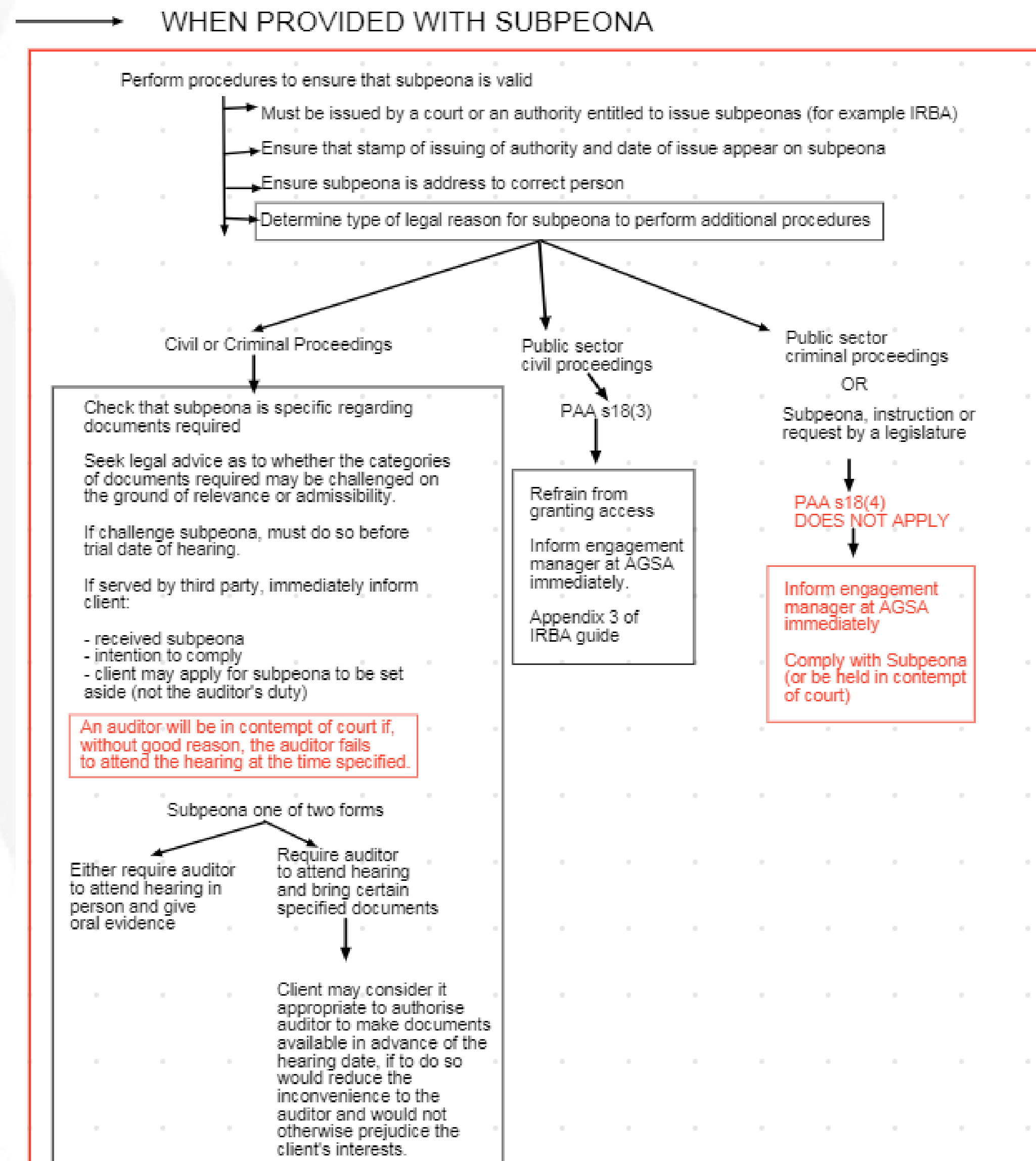
"Hold Harmless" letter inappropriate

# Scenario 4: ISAE 3000

Assurance engagements other than audits or reviews of historical financial information.

Contains requirements for the engagement partner to request access to the working papers of another auditor in order to determine whether the work performed is adequate for the auditor's purposes.

# Scenario 5: Subpeona





# Scenario 5: Subpeona

## ▶ WHEN PROVIDED WITH SUBPEONA

Perform procedures to ensure that subpeona is valid

- Must be issued by a court or an authority entitled to issue subpeonas (for example IRBA)
- Ensure that stamp of issuing of authority and date of issue appear on subpeona
- Ensure subpeona is address to correct person
- Determine type of legal reason for subpeona to perform additional procedures

Civil or Criminal Proceedings

Public sector  
civil proceedings

Public sector  
criminal proceedings

# Scenario 5: Subpeona

## Civil or Criminal Proceedings

- Check that subpoena is specific regarding documents required
- Seek legal advice as to whether the categories of documents required may be challenged on the ground of relevance or admissibility.
- If challenge subpoena, must do so before trial date of hearing.
- If served by third party, immediately inform client:
  - received subpoena
  - intention to comply
  - client may apply for subpoena to be set aside (not the auditor's duty)

An auditor will be in contempt of court if, without good reason, the auditor fails to attend the hearing at the time specified.

# Scenario 5: Subpeona

Subpeona one of two forms



```
graph TD; A[Subpeona one of two forms] --> B[Either require auditor to attend hearing in person and give oral evidence]; A --> C[Require auditor to attend hearing and bring certain specified documents]; C --> D[Client may consider it appropriate to authorise auditor to make documents available in advance of the hearing date, if to do so would reduce the inconvenience to the auditor and would not otherwise prejudice the client's interests.]
```

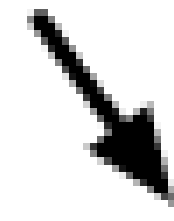
Either require auditor to attend hearing in person and give oral evidence

Require auditor to attend hearing and bring certain specified documents

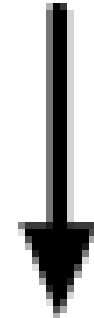
Client may consider it appropriate to authorise auditor to make documents available in advance of the hearing date, if to do so would reduce the inconvenience to the auditor and would not otherwise prejudice the client's interests.

# Scenario 5: Subpeona

Public sector  
civil proceedings



PAA s18(3)



Refrain from  
granting access

Inform engagement  
manager at AGSA  
immediately.

Appendix 3 of  
IRBA guide

# Scenario 5: Subpeona

Public sector  
criminal proceedings

OR

Subpeona, instruction or  
request by a legislature



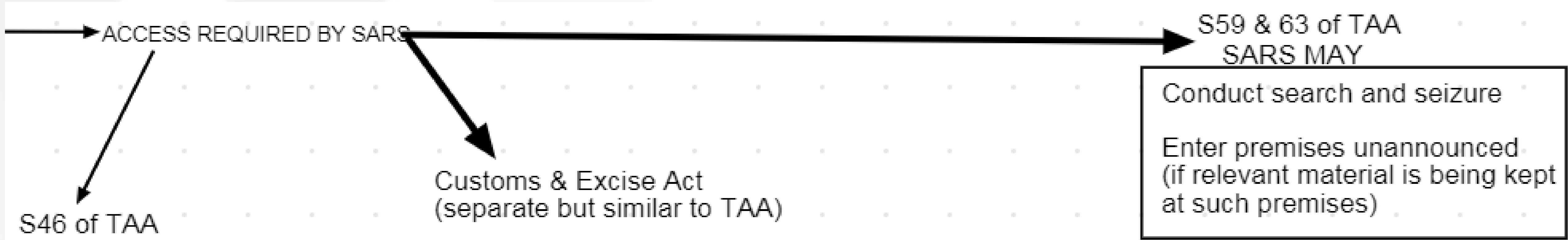
**PAA s18(4)  
DOES NOT APPLY**



**Inform engagement  
manager at AGSA  
immediately**

**Comply with Subpeona  
(or be held in contempt  
of court)**

# Scenario 6, 7 & 8: SARS



# Scenario 6: SARS

## S46 of TAA

SARS GUIDE  
IRBA GUIDE

NB guides are not  
legally binding

A request for access to audit working papers forms part of SARS's right in terms of the Tax Administration Act, 28 of 2011 to request RELEVANT MATERIAL

Example of  
circumstances

Verify if tax return, declaration or document is correct

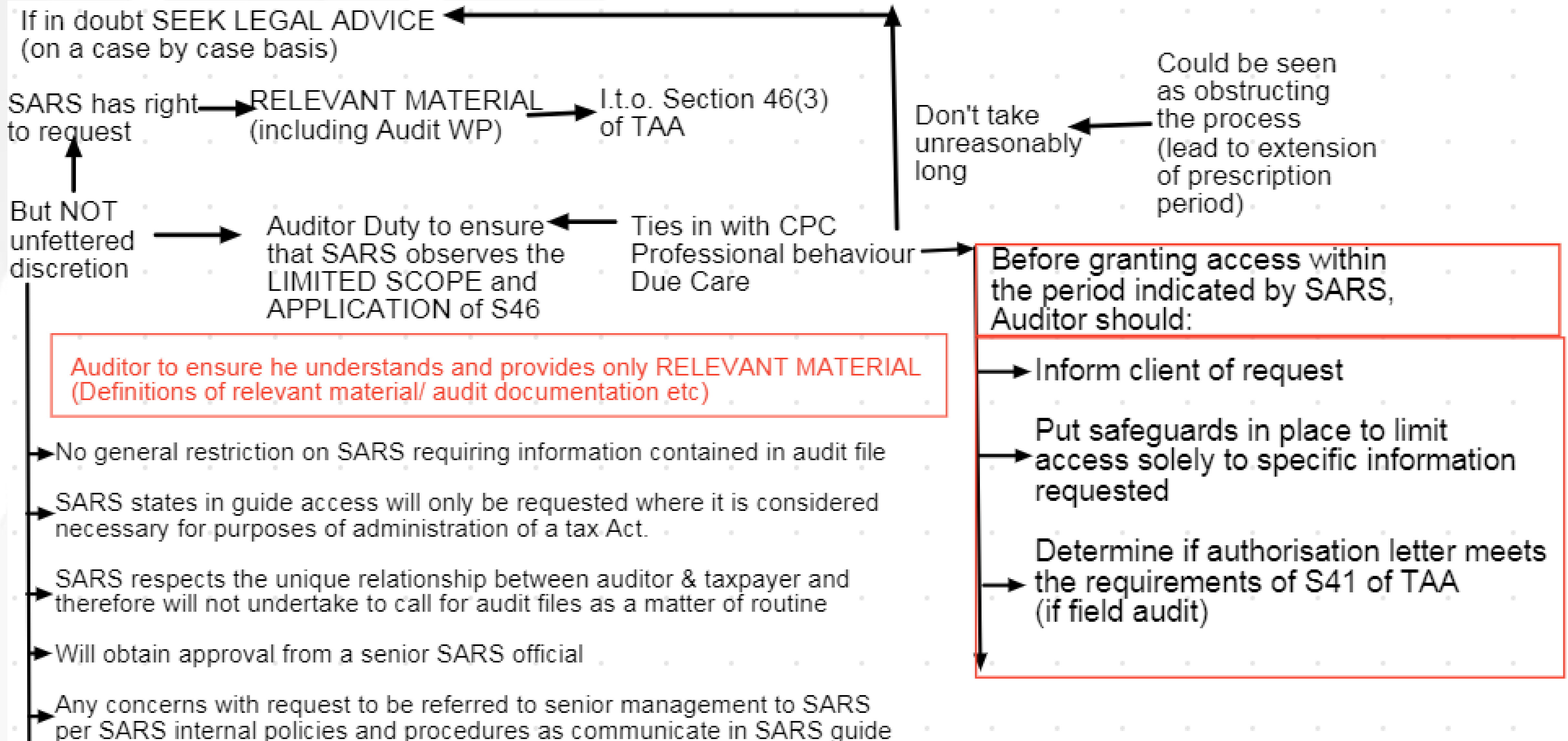
Auditing a person's tax affairs

Establishing a person's correct liability or refund

Collecting a tax debt

Investigating and collecting evidence on whether or not a person has committed a tax offence

# Scenario 6 SARS





# Scenario 7 SARS

→ S59 & 63 of TAA  
SARS MAY

Conduct search and seizure

Enter premises unannounced  
(if relevant material is being kept  
at such premises)

With or Without Warrant

# Scenario 7 SARS

With Warrant (S59 of TAA)

## OBTAINING THE WARRANT

Authorised by Senior SARS Official

SARS applies to magistrate for said warrant

Magistrate or judge issues warrant when satisfied **REASONABLE GROUNDS** to believe that a person failed to comply with any tax obligation/ committed a tax offence

AND

Relevant material likely to be found on premises may provide evidence

# Scenario 7 SARS

## SARS MAY

May enter and search premises and any person present on premises

May seize relevant material and related storage (e.g. computer/ device)

Make extracts/ copies of relevant material

May require a reasonable explanation of relevant material from a person

# Scenario 7 SARS

## SARS MUST.

Produce the warrant to owner of premises

If owner not present - affix a copy of warrant to premises in a prominent and visible place

# Scenario 7 SARS

## THE AUDITOR SHOULD

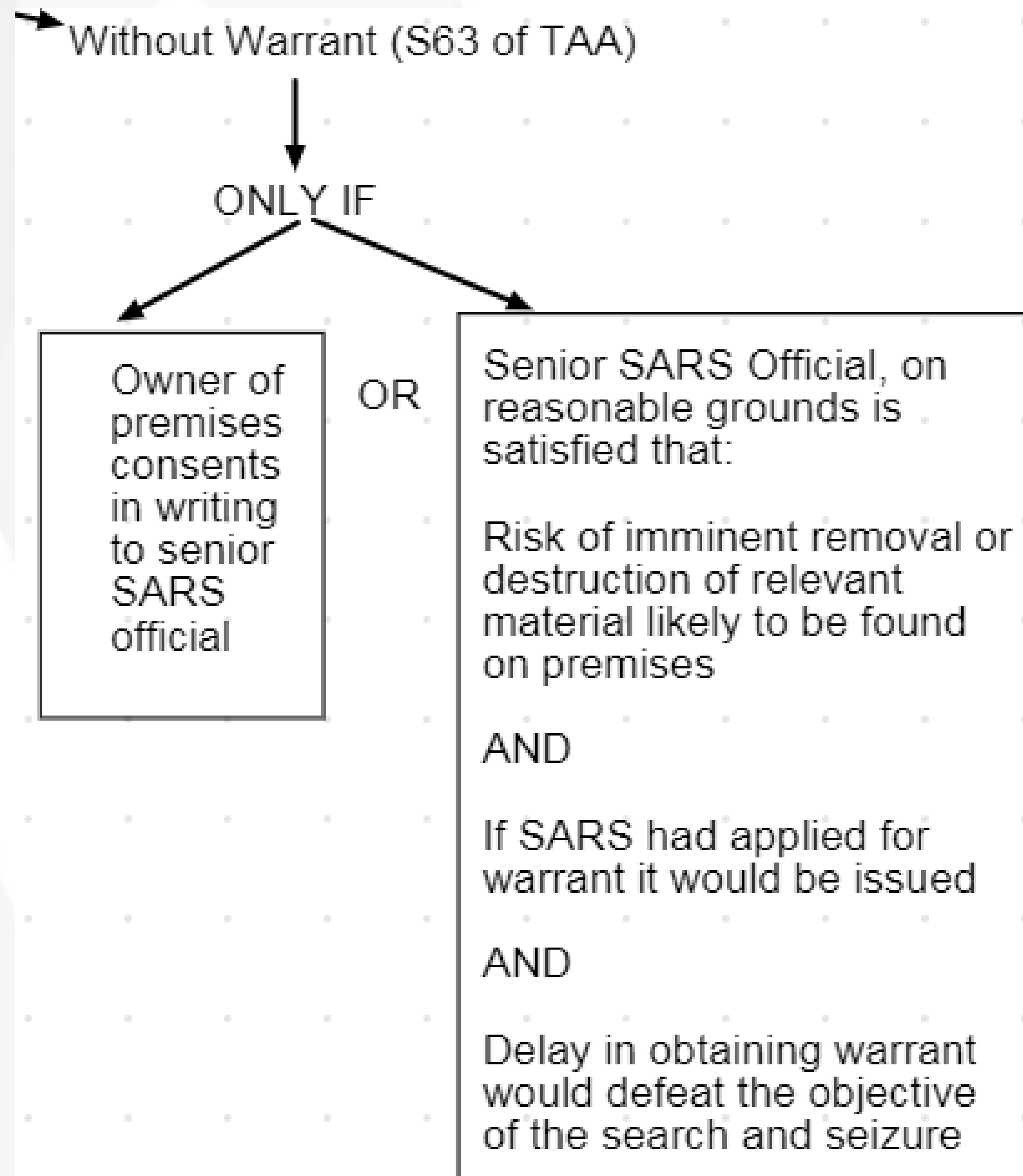
Be aware that failure to produce the warrant as required entitles a person to refuse access to the premises.

When presented with warrant, determine whether warrant is valid before granting access to the premises

Inform relevant client of the search and seizure

Take necessary steps to limit access solely to relevant material, which must be described with reasonable specificity in warrant

# Scenario 7 SARS



# Scenario 7 SARS

## SARS MUST

Inform the owner or person in control of the premises what the legislative basis is for the search and alleged failure to comply with an obligation under a tax Act or tax offence that is the basis for the search

## AUDITOR SHOULD

Inform relevant client of search and seizure

Take necessary steps to limit access solely to the relevant material being seized.

# Scenario 8 SAPS

```
graph TD; A[ACCESS REQUIRED BY SAPS] --> B[SEARCH and SEIZURE]; B --- C[NO LEGAL PRIVILEGE between auditor and client. An auditor MAY NOT lawfully refuse to hand over documents of relevance when called upon to do so by the SAPS, provided SAPS have shown that they are acting within the ambit of their powers]; C --> D[With Warrant (S21 Criminal Procedure Act, 51 of 1977)]; C --> E[Without Warrant];
```

ACCESS REQUIRED BY SAPS

SEARCH and SEIZURE

**NO LEGAL PRIVILEGE** between auditor and client.  
An auditor **MAY NOT** lawfully refuse to hand over documents of relevance when called upon to do so by the SAPS, provided SAPS have shown that they are acting within the ambit of their powers

With Warrant (S21 Criminal Procedure Act, 51 of 1977)

Without Warrant



# Scenario 8 SAPS

With Warrant (S21 Criminal Procedure Act, 51 of 1977)

↓  
Warrant will be issued by magistrate or judge IF  
reasonably believe...in possession, required as evidence

↓  
SAPS MAY

Seize article

Search any person identified in warrant

Enter and search any premises identified in warrant

Search any person found on or at premises

Execute by day (unless written authorisation to execute  
by night)

Use warrant until executed or cancelled

# Scenario 8 SAPS

## SAPS MUST

Upon demand of any person whose rights have been effected in terms of search and seizure, hand to him a copy of the warrant.

## THE AUDITOR SHOULD

Determine whether the warrant is valid before granting access to the auditor's premises

Inform the relevant client of the search and seizure

Take the necessary steps to limit access solely to the specific information covered by the warrant

# Scenario 8 SAPS

## Without Warrant

ONLY IF

Person consents

OR

Police official believes a search warrant would be issued if he applied for one AND the delay in obtaining one would defeat the objective of the search

# Scenario 8 SAPS

## THE AUDITOR SHOULD

Request a search warrant as envisaged in Section 21 of the Criminal Procedure Act to be produced,

Not consent to a search or seizure without this written search warrant being produced.

**HOWEVER**, if police official maintains that he would be issued with a search warrant if it were applied for and that the delay in obtaining such a warrant would defeat the objective of the search, the auditor may not lawfully refuse to allow the police official to search and seize documents and should therefore allow the search and seizure.

Be aware of auditor's obligations and rights in terms of different laws that grant search and seizure rights and obligations (refer IRBA Guide P 26 for list)

# Scenario 9 Co Act

ACCESS REQUIRED IN TERMS OF COMPANIES ACT

S176 OF COMPANIES ACT, 71 OF 2008

S417 OF COMPANIES ACT, 61 OF 1973

# Scenario 9 Co Act

## S176 OF COMPANIES ACT, 71 OF 2008

The Companies and Intellectual Property Commission OR Takeover Regulation Panel

May issue a summons to any person

to appear before the Commission or Panel

OR

to deliver or produce documents for purposes of an investigation/ inspection carried out by them.

# Scenario 9 Co Act

## S417 OF COMPANIES ACT, 61 OF 1973

Section 417 of the Companies Act, 1973, has remained in force after the Companies Act, 2008, came into effect; and this will be until the Minister determines, by notice in the Gazette, that the section will cease to have effect.

In any winding-up of a company unable to pay its debts,

↓  
the Master of the Court... may,

↓  
at any time after a winding-up order has been made,

↓  
summon...any director or officer of the company or person

↓  
known or suspected to have in his possession any property of the company  
or believed to be indebted to the company,

↓  
or any person whom the Master or the court deems capable of giving information  
concerning the trade, dealings, affairs or property of the company.

# Scenario 9 Co Act

Any person summoned under subsection 417(1) may be represented, and should consider obtaining representation, by an attorney, with or without counsel, at his attendance before the Master or the Court.

## THE MASTER MAY

Examine any person summoned under subsection (1) on oath or affirmation concerning any matter referred to in that subsection, either orally or on written interrogatories

Reduce his answers to writing and require him to sign them

## THE AUDITOR HAS THE RIGHT TO Legal Representation

## THE AUDITOR MUST

Answer any question put to him at the examination, notwithstanding that the answer could incriminate him...

If he refuses to answer, answer if so obliged by the Master or the Court, after the Master or the Court has consulted with the Director of Public Prosecutions

(Read more page 25 of IRBA guide...Many requirements and stipulations...)



# Scenario 10 PAIA

## ACCESS REQUIRED IN TERMS OF PROMOTION OF ACCESS TO INFORMATION ACT, 2 OF 2000

**PURPOSE:** Give effect to CONSTITUTIONAL RIGHT OF ACCESS to any information held by the State/ any person which is required for the exercise or protection of any rights.

Manner in which access should be treated (Chapter 3 PAIA)

Right to access is not automatic.

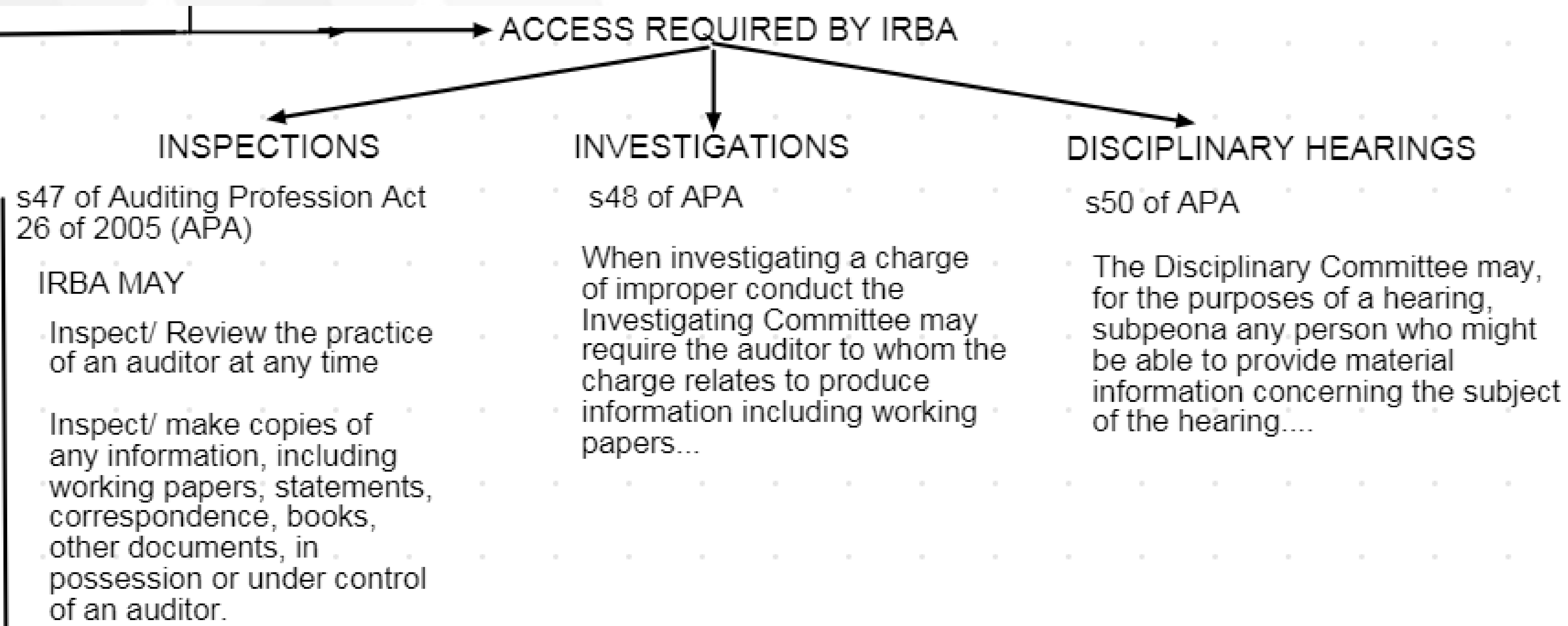
Seek Legal Advice.

Mandatory grounds for refusal of access (Chapter 4)

A person must be given access to any record of a private body (Chapter 50) if:

- record is required for the exercise or protection of any of the person's constitutional rights
- person complies with the procedural requirements laid down in the Act relating to a request for access to that record
- Request for information does not fall within any of the grounds laid down in the PAIA upon which access to information may be refused

# Scenario 11 IRBA



# Scenario 11 IRBA

## IRBA MUST

At least every 3 years inspect/  
review the practice of an auditor  
that audits a public company,  
as defined in Companies Act,  
71 of 2008

## THE AUDITOR MAY NOT

Refuse to produce any information,  
including working papers, etc....  
subject to the Promotion of Access  
to Information Act 2 of 2000, or  
any other law, even though the  
auditor is of the opinion that the  
information contains confidential  
information about a client

## THE AUDITOR WILL NOT

be held liable civilly or criminally  
for producing information in  
good faith requested by IRBA

# Q&A

Please use the chat sidebar to the right of the video / presentation on the screen to ask your questions.

If you would like to e-mail a question please use:

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**Thank you for your  
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