

Compliance & Legislation Update

Presenter: **Caryn Maitland CA(SA)**

DECEMBER 2020

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Compliance and Legislation Updates*

This webinar covers changes during the month of November 2020

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Presenter

Caryn Maitland

Caryn is a qualified CA(SA and RA, who has lectured extensively at UKZN (and other institutes) where she lectured Advanced Financial Accounting up until 2011 as well as co-ordinating the module on the Pietermaritzburg campus and was appointed Section Head of Financial Accounting and Deputy Head of the School of Accounting (managing the Pietermaritzburg campus) prior to leaving UKZN.

She has conducted independent workshops and seminars for professional accountants since 2006 on various topics and has consulted on a number of technical issues. Since January 2011, she has focused on her own business as technical freelance consultant and trainer to those working within the accounting profession. Caryn is a technical advisor to the SAICA Eastern Region Midlands District, Northern District and Southern District Associations, as well as the Small Practice Interest Group in Durban – specialising in financial reporting (IFRS, IFRS for SME's and general accounting), assurance, legislation and ethics. Caryn has a passion for Corporate Governance, which together with her Companies Act specialism and Financial Management for Non Financial Management lecturing background, has served her well in consulting and advising various Boards of Directors in recent years.

Caryn is also a platform presenter for various institutes as well as many small to medium accounting practices across the country and into Southern Africa. Maitland was appointed as a visiting Associate Professor to the University of Limpopo tasked with mentoring their Financial Accounting staff (Aug 2011 to Dec 2013).

Maitland's passion is IFRS and IFRS for SME's and was delighted at the opportunity granted in 2013 to serve on the APC subcommittee constituted to investigate the need for Micro GAAP and the role of IFRS for SME's for small and medium sized practitioners. Caryn, also serves on the Joint Accountants, Auditors and Attorneys Committee of SAICA, and is part of the School Governing Body project initiated by SAICA in KwaZulu-Natal, and has been appointed as an alternative member to the APC in June 2020

Caryn was elected as the first woman Chairperson for the Midlands District Association for SAICA in 2018 and also serves on the Eastern Region SMP Committee as well as the Local Subvention Committee for SAICA. In 2019 Caryn was appointed to the SAICA Eastern Region Council. As someone who is committed to environmental affairs, Caryn serves as a non-executive director for the Institute of Natural Resources, a Non Profit Company focusing on research. Since 2018 Caryn has worked extensively with commerce and industry, assisting analysts, directors and other users of financials to interpret, prepare, analyse and forecast based on the results of financial statements.



WHAT'S ON THE AGENDA?

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Quote

“The key to change is... is to let go of fear”
— **Roseanne Cash**

ACCOUNTING UPDATE

Accounting Update

The following items are dealt with here:

1. IFRS Monthly News Summary

- Headline Earnings Circular published for comment
- *Review of Merger and Acquisition accounting*
 - *Business combinations*
- *Accounting for common control*
- *Proposed amendments to IFRS 16 (Sale and leaseback)*
- *Educational material: Climate change impact on financials*

AUDITING UPDATE

Auditing Update

The following items are dealt with here:

IRBA CPD Policy

Audit Reform Update

African Bank Disciplinary Report

Audit Reform

Auditing Profession Amendment Bill

Enabler vs Victim by Prof Wiseman Nkulu

BEIS Report on the Future of Audit

Sir D Bydon's Report of the Independent Review of the Quality and Effectiveness of Audit

International Benchmarking

Financial Reporting Council Developments

IAASB Developments

IESBA Developments

International benchmarking

Papers, speeches and research reviewed to date:

- ABASA Speech by Freeman Nomvalo
- The Dutch Authority for the Financial Markets (AFM) “Vulnerabilities in the structure of the audit sector” report
- The Department for Business, Energy and Industrial Strategy (BEIS) Select Committee (UK) the “Future of audit” report
- “Beyond compliance: Building a governance culture” report of the Joint committee on corporate governance of the European Corporate Governance Institute
- Sir Donald Brydon “Report of the independent review into the quality and effectiveness of audit”
- Competition and Market Authority (UK) Statutory audit services market study
- Committee on the Financial Aspects of Corporate Governance and Gee and Co. Limited (Sir Adrian Cadbury Report), 1992
- Ethics, trust and today's capital markets by Jim Copeland (Former Deloitte CEO)

International benchmarking

Papers, speeches and research reviewed to date:

- EU Statutory Audit Reform
- Financial Reporting Council (UK) Guidance on Audit Committees, 2016 (revised from the Smith Guidance on Audit Committees 2013)
- Financial Reporting Council (UK) Paper on operational separation
- Financial Reporting Council (UK) Post Implementation Review of the 2016 Auditing and Ethical Standards
- IAASB A framework for audit quality
- IAASB Audit quality management project
- IAASB Less complex entities project
- IESBA Fees project
- IESBA Non- assurance services (NAS) project

International benchmarking

Papers, speeches and research reviewed to date:

- INTOSAI 12, The Value and Benefits of Supreme Audit Institutions (SAI) – making a difference to the lives of citizens
- “Independent Review of the Financial Reporting Council” report by Sir John Kingman
- Ministerial Panel for the Review of the Draft Accountancy Profession Bill
- Regulation of Auditing in Australia: Interim Report (Parliamentary enquiry)
- SAAPTI Discussion document “Considerations to address the key challenges facing the SA auditing profession”
- Sarbanes- Oxley Act
- The Monitoring Group “Strengthening the international audit and ethics standard- setting system”
- Treadway Commission Report issued by US Securities and Exchange Commission (SEC), 1989

BEIS the “Future of Audit”

- The report looks into reforming the UK audit market.
- The BEIS report is one of a number of reviews that are taking place, or have taken place, looking at different aspects of the audit market, including a Competition and Market Authority's (CMA) study into audit, the Brydon review on the future of audit and the Kingman review of the Financial Reporting Council (FRC).
- The BEIS Committee's inquiry into the future of audit was launched on 12 November 2018 (link to Parliament website). The object of the inquiry was to examine how the three reviews, indicated above, would complement each other, given the links between the quality of the product, its regulation and the health of competition. The BEIS Committee wanted to ensure that what emerged from these reviews was a coherent framework for auditing that could regain the confidence of investors and the public.
- The BEIS report is the output of a series of hearings that have been held with leaders of the Big Four audit firms, investors, academics, Audit Committee Chairs, the UK audit regulator, mid-tier firms and Government stakeholders.
- Among **the recommendations are proposals for at least an operational split of audit and non-audit services**, with a structural split to be considered if this is deemed ineffective after three years; piloting joint audits between a Big 4 firm and a challenger firm in the 'upper reaches' of the FTSE 100, in conjunction with a cap on the market share of individual firms. These are alongside wider calls for a stronger regulator, a UK version of Sarbanes-Oxley and expanding the scope of audit.

Sir Donald Brydon “Report of the independent review into the quality and effectiveness of audit”

- The Report contains recommendations which are intended to improve the audit standards for ‘Public Interest Entities’, which in this context includes UK companies with debt or equity securities admitted to trading on a regulated market (so includes companies on the main market but not on AIM), and credit and insurance firms. The Report suggests that, in the interests of proportionality, some of the recommendations should apply initially only to those companies in the FTSE 350.
- The Report includes 64 recommendations in total. There is a summary of the conclusions contained in the Report, but some of the key recommendations are summarised below.

Audit purpose

- The Report recommends that a new definition of the purpose of audit be adopted, to reflect its role as a public interest function that demonstrates more than compliance with laws and rules. Brydon proposes the following definition: “The purpose of an audit is to help establish and maintain deserved confidence in a company, in its directors and in the information for which they have responsibility to report, including the financial statements.”

Audit profession

- There should be a new profession of corporate auditing, distinct from accounting, and which is governed by a set of overarching principles. It is recommended that the new statutory body to replace the Financial Reporting Council, the Audit Reporting and Governance Authority (ARGA) should facilitate the establishment of the new profession. The Report proposes a set of principles – the Principles of Corporate Auditing. The Report further proposes that the existing definition of professional judgement with a view to strengthening, and demonstrating better, the use of judgement in audit.

Sir Donald Brydon “Report of the independent review into the quality and effectiveness of audit”

The Audit Report

- Brydon recommends that “true and fair” be replaced in company law with the term “present fairly, in all material respects”.

Directors’ reporting

- In order to frame the auditor role and clarify the extent of assurance in relation to the information auditors communicate, the directors should present to the shareholders for an advisory vote a three-year rolling Audit and Assurance Policy. This should indicate their approach to auditor appointment, the scope and materiality of all auditing, the assurance budget and the audit relationship to any identified risk.

Sir Donald Brydon “Report of the independent review into the quality and effectiveness of audit”

Directors’ reporting

•Directors should also publish:

- their statement of principal risks and uncertainties before determining the scope of each year’s audit, and seek shareholder views;
- a Resilience Statement, which would replace the existing Going Concern and Viability Statements; and
- an annual Public Interest Statement.

Role of shareholders

•There are a number of recommendations intended to enable shareholders to influence the scope of the audit and hold the Audit Committee and auditor to account, including:

- a process to give shareholders an opportunity to propose any matters they wish to be covered in the audit; and
- a standing item on the agenda at the AGM to allow questioning of the Audit Committee Chair and the auditor.

Sir Donald Brydon “Report of the independent review into the quality and effectiveness of audit”

Other stakeholders

- The Report recognises the importance of the statutory audit report to stakeholders other than shareholders. The recommendations in this regard include:
 - a statement in the Principles of Corporate Auditing that auditors act in the public interest and have regard to the interests of the users of their report beyond solely those of shareholders;
 - that directors actively seek employee views regarding the audit scope and report back to them on how they have taken their views into account;
 - the statutory auditor should be added to the list of ‘prescribed persons’ under the Public Interest Disclosure Act; and
 - bringing existing company disclosures on supplier payment performance into the annual report to be subject to a level of audit as described in the company’s Audit and Assurance Policy.

Sir Donald Brydon “Report of the independent review into the quality and effectiveness of audit”

Fraud

- The Report considers that auditors should endeavor to detect fraud. Recommendations include:
 - a new directors’ reporting duty to set out the actions they have taken each year to prevent and detect material fraud;
 - a corresponding new duty on auditors to set out in their report how they have assured the directors’ statement on material fraud, and what additional steps they have taken to assess the strength of the relevant controls and to identify any such fraud; and
 - the establishment of an independent Auditor Fraud Panel to judge auditors’ culpability in a manner similar to that followed by the Panel on Takeovers and Mergers.

Financial Reporting Council developments

FRC Paper on Operational separation

The objectives of the paper include:

Improving audit quality by ensuring that people in the audit practice are focused above all on delivery of high-quality audits in the public interest.

Improving audit market resilience by ensuring that no material, structural cross subsidy persists between the audit practice and the rest of the firm.

The desired outcomes from the paper include:

Audit practice governance prioritises audit quality and protects auditors from influences from the rest of the firm that could divert their focus away from audit quality.

The total amount of profits distributed to the partners in the audit practice should not persistently exceed the contribution to profits of the audit practice.

Individual audit partner remuneration is determined above all by contribution to audit quality, taking account of the degree of difficulty and risk of the audits.

Audit practice financial reporting is transparent to the regulator and public, allowing effective monitoring of audit practice performance and financial resilience.

The culture of the audit practice supports audit quality and the public interest by encouraging ethical behaviour, openness, teamwork, challenge and professional scepticism/judgement.

Auditors should act in the public interest and work for the benefit of shareholders of audited entities and wider society; they are not accountable to audited entities' executive management and are not (nor viewed as or considered to be) consultants.

Firms should provide regular management information for the audit practice to FRC, including financial statements, audit quality indicators and other information which indicates whether these outcomes are being delivered.

Financial Reporting Council developments

FRC Paper on Operational separation (continued)

FRC will publish annually an assessment of whether firms are delivering these objectives and outcomes.

The paper contains 22 principles some of which include:

Governance at audit firms: Remuneration of audit partners and audit partner promotion should be overseen by a subcommittee of the Audit Board comprising Audit Non Executives (ANE) only. Admissions of partners will remain a partnership responsibility and subject to the governance procedures of the partnership. However, the selection of candidates to be admitted to the partnership to practice as audit partners will be overseen by the Audit Board.

Financial aspects of the separate practice: The audit practice should produce a separate profit and loss account with overhead absorption on an equitable basis.

Transparency: Firms should publish information about the governance of the audit practice and the terms on which transactions occur between the audit and non-audit business and the nature of these transactions. After an agreed transition period, firms should publish the audit practice's profit and loss account described above in their Transparency Reports.

Accountability: Firms should appoint one individual (or a small number of individuals with clearly defined and non-overlapping responsibilities) from the Senior Management team to be responsible and accountable for ensuring the outcomes and principles for operational separation are delivered, embedded and monitored.

IAASB developments

Quality Management standards

- In the September 2020, IAASB meeting, the standards on quality management were approved. This includes ISQM 1, ISQM 2 and ISA 220 (Revised). The standards will be effective from 15 December 2022.
- The key objectives of ISQM 1 include:
 - Enhancing the robustness of firm's systems of quality control through various means
 - Introducing a more proactive and tailored approach to managing quality.
 - Increasing firm leadership responsibilities and accountability, and improving firm governance.
 - More rigorous monitoring of systems of quality control and more effective remediation of deficiencies.
 - Modernizing the standard for an evolving and increasingly complex environment, including addressing the impact of technology, networks, and use of external service providers.
 - Improving the scalability of the standard.
- The key objective for ISQM 2 is to set more robust criteria for firms to apply when determining which engagements should be subject to Engagement Quality Reviews (EQR)
- ISA 220 (Revised) focuses on strengthening aspects of quality management for individual engagements

IAASB developments

Consultation on Fraud and Going Concern Discussion Paper

The discussion paper is an exploration of the differences between public perceptions about the role of the auditor and the auditor's responsibilities in a financial statement audit.

One aspect common to both fraud and going concern that is continually highlighted relates to the expectation gap.

The purpose of the discussion paper is to gather perspectives from stakeholders about the role of the auditor in relation to fraud and going concern and to obtain inputs on matters about whether the standards related to fraud and going concern remain fit-for-purpose in the current environment.

The due date for comments is 12 January 2021

Less complex entities project

The objective of this initiative is to explore possible actions to address perceived issues when undertaking audits of less complex entities for further IAASB consideration.

IESBA developments

Non-Assurance Services

The International Ethics Standards Board for Accountants (IESBA) issued an Exposure Draft titled: ***Proposed Revisions to the Non-Assurance Services (NAS) Provisions of the Code*** in January 2020.

Among the key changes proposed to the NAS provisions are:

A prohibition on providing NAS to an audit client that is a public interest entity (PIE) if a self-review threat to independence will be created;

Further tightening of the circumstances in which materiality may be considered in determining the permissibility of a NAS;

Strengthened provisions regarding auditor communication with those charged with governance (TCWG), including, for PIEs, a requirement for NAS pre-approval by TCWG; and

Stricter requirements regarding the provision of some NAS, including certain tax and corporate finance advice.

The NAS exposure draft also includes enhanced guidance to assist firms in evaluating the level of threats to independence when providing NAS to audit clients.

IESBA developments

Fees project

The objective of the IESBA's Fees project is to review the provisions in the Code pertaining to fee-related matters.

The project is responsive to a public interest need for IESBA to deal with fee-related matters, including those that impact or are perceived to impact auditor independence – both independence of mind and independence in appearance.

Among the key changes are the following:

- Clarify that the audit fee should be a standalone fee within the spectrum of total fees from the audit client so that the provision of services other than audit does not influence the level of the audit fee.

- Enhance the provisions regarding fee dependency both when audit clients are public interest entities (PIEs) and when they are non-PIEs, including establishing a threshold for addressing threats in the case of non-PIE audit clients.

- Require the firm to cease to be the auditor for a PIE audit client if circumstances of fee dependency continue beyond a certain period.

SAAPTI discussion paper

- SAAPTI was established as a stakeholder forum to address the concerns prevalent in the auditing profession.
- SAAPTI issued a discussion paper, *Considerations to address the key challenges facing the SA Auditing profession*, with 33 recommendations that cover audit quality, ethics, independence, governance and transparency, public interest and the expectation gap, transformation and market concentration.
- Some of the considerations include:
 - Firm should include culture audits to determine to what extent audit staff and partners appreciate their responsibilities to the public interest and that a good audit is in the public interest.
 - The annual general meeting of a company with an audit committee should introduce a non-binding vote on the effectiveness of the audit committee as reflected in their report.
 - A regulator (the JSE or CIPC) should have the power to nominate an observer on an audit committee in specified exceptional circumstances.
 - Management should be required to disclose a statement regarding the effectiveness of internal controls over financial reporting, including any material failures at the relevant assessment date. (This is a JSE Amended Listing requirement)
 - The regulator (IRBA or the JSE) should investigate the reasons when audit firms changed outside the normal rotation cycle, specifically where there are significant unexplained differences between the fees charged by the outgoing auditor and the first year audited by the successor.

SAAPTI discussion paper

- Some of the considerations include (continued):
- The Profession should establish or support the establishment of a Centre for Ethical Leadership which can form part of the proposed Centre of Audit Quality (CAQ). This centre would conduct extensive research and produce thought leadership specific to professional ethics and focus on on-going research that addresses issues such as evolving audit firm environments/cultures and the impact on ethical behaviour.
- The Profession should introduce an oath to mark an explicit commitment to ethical behaviour.
- The publication of a transparency report should be mandatory for all firms that audit public interest entities. An appropriate body should provide guidance on the disclosures required in the report.
- For regulators to consider the feasibility (including liability reform) of developing a framework to facilitate joint/shared audits, with one of the auditors being a black owned and managed firm.

Other project related developments

• **Auditing Profession Amendment Bill**

Requirements for the Independent Regulatory Board for Auditors (IRBA) Investigations Committee including the provision of subpoena rights to this committee;

The composition and functioning of the IRBA Board;

New sections dealing with the searching and entering of premises as well as the warrants to be obtained in such situations;

Disqualification grounds for registration as an auditor.

SAICA believes that the current scope of disqualification to only include financial malfeasance in the APA Bill is too narrow. This should be expanded to disqualify or remove auditors where the person has been:

Convicted of any violent crime with no option of a fine; or

Where there was an option for a fine the IRBA should have discretion.

Other project related developments

Enabler or Victim by Prof. Wiseman Nkuhlu publication

Reliance on the audit profession is much higher in developing nations with low trust societies and weak institutions.

Professional services firms need to remain true to their original reason for existence, which is to enhance trust in financial reporting and global financial markets.

Professional services firms have become predominantly commercial enterprises that are driven by self-interest and profit maximization. There has been dilution of the focus on auditing.

Most accounting failures are less about dishonesty and more tales of insufficient courage, curiosity and independence of thought in the face of huge commercial incentives.

There is a need to respond quickly and decisively to a reputational crisis.

Because corruption and unethical conduct have caused so much damage to the country, the public demands action immediately, not in the distant future.

In an open society with effective social media, a big firm can lose its license to operate and effectively be closed down by the public through social media.

Major emerging themes based on consultation to

1. The following three questions were guiding the consultations with the stakeholders:
 - a. Causes of the current crisis around professional (audit) reputation.
 - b. Possible solution for improvement of the audit quality.
 - c. Possible solutions for improvement of the financial reporting.
2. While there is no single point of view or an answer to the questions posed, all participants strongly embrace the need for the change. A sufficiently open mind set was demonstrated by the participants which allows us to look forward to finding an effective solution through this consultation.
3. The ultimate goal of the consultation is to facilitate a process which will be conducted by the National Treasury in line with the February 2020, Budget speech where an appropriate ministerial panel has to be created to drive this agenda.
4. Practice governance
 - a. The incentive structures at audit firms need to be designed to ensure that the focus is on audit quality and ethical practices.
 - b. Auditing professionals need to be reminded that their primary responsibility is to serve the interests of the public, not their clients.
 - c. There is an answered question around finding the balance between ensuring that the appropriate multidisciplinary skills are available for the audit as well as ensuring that non-assurance agenda does not compromise the audit quality and independence of the auditor.

Major emerging themes based on consultation to

4. Joint accountability/combined assurance
 - a. There must be joint accountability for corporate failures and the focus should not just be on external auditors. Executive management are often the perpetrators of fraud while other lines of defense such as the Board of Directors, audit committees and the internal audit function also have a significant role to play.
5. The profession has, somewhat, lost its moral compass. This is not just indicative of the profession but of the country as a whole. There is a need for continuous touch-points on **ethics**.
6. There is a need for regulators and professional bodies to act promptly when corporate failures occur. In this regard, there needs to be **collaboration** between regulators such as IRBA and the JSE, together with professional bodies such as SAICA.

African Bank

COMPANY SECRETARIAL UPDATE

Company Secretarial Update

The following items are dealt with here:

- **Notices and Practice Notes issued (enforcement and to customers):**
 - Notice 51 and 54 of 2020: Uploading of new eServices for online Co-Op registrations
 - *Balance of notices relate to administration issues*

Guide 2: Quick Directors Guide

COVID-19 UPDATE

COVID-19

Your best friend for information

<https://www.gov.za/coronavirus>

COVID-19 Update

Presidents Address:

"Unless we do things differently, this will be the last Christmas for many." - President Cyril Ramaphosa

The sale of alcohol at liquor stores will only be permitted between 10AM and 6PM from Monday to Thursday. Wine farms may continue to offer tastings.

Four provinces are leading the COVID-19 infections:

- Eastern Cape
- Western Cape
- KwaZulu-Natal
- Gauteng

COVID-19 Update

Presidents Address:

"For the first time most new infections are among young people - 15 to 19 years old.

Further restrictions to be imposed nationwide from midnight tonight. Firstly, stricter enforcement of existing level 1 restrictions, especially wearing of masks.

Secondly, we're taking measures to reduce the risks of superspreader events. Gatherings, including religious gatherings, will be limited to 100 people for indoor and 250 for outdoor events.

Beaches and public parks to be closed in the Eastern Cape and Garden Route District. Beaches in KwaZulu-Natal to be closed on 15, 25, 26 and 31 December as well as 1-3 January 2021. Northern Cape and Western Cape (excluding Garden Route) parks and beaches will remain open between 9AM and 6PM.

A new curfew comes into play - 11PM to 4AM daily. Restaurants and bars to close at 10PM to allow workers to make their way home before curfew. This curfew also applies to New Year's Eve and Christmas Eve.

Article of interest: How COVID-19 will impact December leave for workers in South Africa

- Can an employer cancel shut down leave?
- Cancel leave due to employee's prebooked holiday being cancelled?
- Can an employee take unpaid leave if their leave is exhausted?
- Managing the abuse of sick leave over the holiday season?

OTHER LAWS & REGULATIONS

The Big 5

The following items are dealt with here:

This month's big 5:

. Issue 19 covers new relevant National laws up to 7 December 2020:

- 1) The Auditing Profession Act (Amendment Bill 2020);
- 2) The Compensation for Occupational Injuries and Diseases Act (Domestic Workers);
- 3) The Cybercrimes Bill (Version D);
- 4) The Disaster Management Act (Regulations and Directions); and
- 5) The Financial Advisory and Intermediary Services Act (Draft Regulations)

Cybercrime Bill

TAXATION UPDATE

November/December 2020

M&A Newsletters

OTHER MATTERS OF INTEREST

Other Articles

SAICA press releases and other publications:

- Quarterly update on Disciplinary Outcomes

Media articles:

- KPMG Report (UK) The New Customer
- FM: To fight fraud, manage culture
- The case for Outsourcing Collections at Accounting Firms (CPA)
- IFAC – Enhancing Firm Credit Control and Fee Collection
- IFAC – Anti Money Laundering – The Basics
- IFAC – Accountants Supporting Sustainable Recovery

QUESTIONS?

Formal Q&A Session

We will now take a **quick comfort break** before we discuss some questions received during the webinar.

Remember: A Q&A summary will also be uploaded to your profile

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

technicalquestions@accountingacademy.co.za

E-mail general comments to info@accountingacademy.co.za

**Thank you for your
participation!**

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