

Access to Working Papers

Presenters: Caryn Maitland CA(SA)

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By SARS and others

Presenter

Caryn Maitland CA(SA)

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.



COURSE OUTLINE

Session Objectives

- Who has the ownership of working papers;
- Their responsibility for granting access to working papers;
- Circumstances where access to working papers is required by law;
- Circumstances where access to working papers is in compliance with reporting standards (ISA, ISRE, ISRS, and accounting officer);
- Circumstances where they are contractually bound to provide access to working papers; and
- Potential risks when granting access to working papers to third parties, including SARS, SAPS, CIPC, client's attorneys, professional bodies

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- Who owns your working papers?
- How to balance the client's right to confidentiality and request from third parties for access to working papers.
- When and how to deny access to your working papers.
- Circumstances where access should be granted to third parties:
- Access required in terms of the Tax Administration Act, POPI, court proceedings, SAPS investigations, CIPC, or foreign jurisdictions.
- Access required in compliance with International Standards and the Code of Professional Conduct for IRBA, SAICA, SAIPA, and SAIBA.
- Access required by internal staff and successor practitioners.
- Access requested in terms of a contractual agreement.
- Potential risks when granting access to working papers to third parties.

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- Policies and procedures regarding access to working papers:
- Engagement letters.
- Internal procedures to handle the request for access.
- Client authorisation letters.
- Third party acknowledgements ("Hold harmless letters")
- Extracts from sections 176, and 213 of the Companies Act, 2008.
- Extracts from section 46 and 241 of the Tax Administration Act, 2011.
- Latest SARS, CIPC and IRBA publications on access to working papers.

Who owns your working papers?

- Working papers (wp) are our tools used to perform our ultimate objective
- Opinion, draft financials, calculate tax payable etc
- Our objective will be different to someone else's (ie 3rd party, SARS, dispute etc)
- A third party should obtain information **directly** from the client, but this is not always possible
- **When in doubt – seek legal advice!! Especially in the time of POPI**

What does “Access to wps” mean?

Defined as:

- granting the client, another auditor, or other third party
- the right to inspect the working papers
- that are retained by the practitioner in support of the practitioner’s opinion, conclusion and/or report of a particular engagement governed by pronouncements, as prescribed, and other laws/regulations and requirements
- **Think ISQMI going forward**
- A client file is one or more folders/files or other storage media, electronic or manual containing the records comprising of the documentation of the engagement

Working papers are?

Working papers are:

- the material prepared by and for, or obtained and retained by, the practitioner
- as required to support the practitioners opinion, conclusion and/or report of a particular engagement
- governed by pronouncements and/or laws
- Working papers are the primary records kept by a practitioner of the
 - procedures applied, the tests performed, the information obtained, discussions held and documented, and the pertinent conclusions reached.
- Working papers may be in the form of data stored on paper, film, electronic media or other media, and include information relating thereto

Who owns your working papers?

- Working papers are the **property solely of the firm**
- **They do NOT belong to the client**

Balancing Clients Confidentiality with 3rd Parties Requests

- Wps contain sensitive client info that is needed for the practitioner to perform their function
- Practitioner is allowed to disclose confidential info where
 - It is compelled or allowed by law
- Need proper and specific authority to disclose, unless there is a legal or professional right to disclose
- Example S213 of Companies Act – must maintain company's confidentiality
- Departures from the above are rare, and are high risk

Responsibility for granting Access?

- Designate a responsible person
- Should be engagement partner
- Develop policies and procedures in handling requests
- Consider situations of working with other professionals
 - Auditor General
 - Joint engagement
 - Successor Auditor

Confidentiality and the Code

- Ethics issue vs legal issue
- “Proper and specific authority”
- Professional courtesy letter.... (permission, ethical and legal framework)
- NOCLAR....
- Promoting professional respect, successor partner should
 - Ask if predecessor has client permission to disclose
 - Obtain written permission to communicate with exiting practitioner
 - What if client refuses to give permission???

Confidentiality and the Code

- Exiting practitioner maintains confidentiality even after the end of the relationship
- Even if existing partner has permission, must consider
 - Will interests of any and all parties be harmed (3rd parties included)
 - Is info that is requested “known and/or reasonably substantiated”
 - Type of communication is appropriated
 - Only provide what is necessary, and “honestly and unambiguously”

Circumstances where access should be granted

- By law
- By Standards
- By contract/mutual agreement
- When in doubt or if the matter is significant **SEEK LEGAL ADVICE**

Access required in terms of law

- Various laws and regulations can make requests for documentation (to cover in detail later)
- Inform client as soon as possible that the request has been made (unless prohibited from doing so...)
- Regulation of the profession
 - IRBA peer review
 - AGSA

Access required in terms of law

- This does not replace speaking to your legal practitioner!
- Always consider the following:
 - Is disclosure legally permissible?
 - Is the disclosure prohibited by law?
 - Is the information subject to legal privilege?

Access required in terms of law

Subpoena

Should not provide access merely because they are presented with a subpoena

Must ensure it is valid

- issued by a Court, or an authority entitled to issue – IRBA,
- stamped and dated,
- addressed to correct person

Access required in terms of law

In Civil Proceedings

May require practitioner to appear in Court rather than disclose docs

- Oral evidence or present docs (contempt is don't comply)
- Subpoena must be explicit in which docs are required
- Legal advice on legal relevance/admissibility
- Challenges need to be made before the Court appearance
- Docs will be taken to Court but Court/Tribunal alone have power to request they are presented

If a 3rd party serves the subpoena

- inform client immediately, that you will comply, client can apply to get it set aside
- 3rd party may request doc and not a Court appearance, client may consider consenting
- Not PA's responsibility to apply to get subpoena set aside

Access required in terms of law

In Public Sector Civil and Criminal Proceedings

Where the audit is performed on behalf of the AGSA, the position in respect of a subpoena for access to working papers is significantly different.

Access to these working papers is regulated by the Public Audit Act, 25 of 2004 (Public Audit Act).

Subsection 18(3) of the Public Audit Act protects authorised auditors against proceedings instituted for the purpose of gaining access to working papers.

If an auditor is served with a subpoena where the audit is performed on behalf of the AGSA, the auditor should refrain from granting access to working papers and inform the engagement manager at the AGSA immediately.

Access required in terms of law

In Criminal Proceedings

- similar to those relating to subpoenas in civil proceedings.
- A PA will be held in contempt of court if the auditor fails to comply with the subpoena.
- Similarly, the ultimate right to require the documents to be produced in court rests with the court, although a client may authorise the auditor to produce documents that are confidential to the client in advance of compliance with the subpoena.
- If an PA is in any doubt, legal advice should be sought as to the auditor's obligations.

Access required in terms of law

SARS (Guide)

- Tax Administration Act, 28 of 2011
- Guide not legally binding
- SARS does not have unfettered access
- S46(3) of TAA – limited scope
- Practitioner must not frustrate SARS unnecessarily
- Clearly separate files – audit, tax, compilation...
- Guide states that access to **audit** file would only be requested if necessary for purposes of administration of the Act – would require senior official approval

Access required in terms of law

SARS – Request for relevant material

Relevant material is defined as any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act, as referred to in Section 3 of the TAA.

The most common reasons for requesting information include:

- Verifying whether a 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; and
- Investigating and collecting evidence on whether a person has committed a tax offence..

Access required in terms of law

SARS – Request for relevant material

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May request taxpayer or another person to submit

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Access required in terms of law

SARS – Request for relevant material

It is only when a field audit or criminal investigation is conducted by a SARS official that a written authorisation letter referred to in Section 41 of the TAA will be presented.

SARS officials are issued with a general authorisation letter to conduct a field audit or criminal investigation.

Access required in terms of law

SARS – Request for relevant material.

PAs who are presented with a request for information should, before granting access to the information and within the period indicated by SARS that the information must be provided:

- Inform the client of the request;
- Put the necessary safeguards in place to limit access solely to the specific information requested; and
- If a field audit is conducted also determine whether the authorisation letter meets the requirements of Section 41 of the TAA.

Sometimes the request by SARS will be made to the client who may then request the auditor to provide certain working papers

Access required in terms of law

SARS – Search and Seizure (with a warrant)

For purposes of information gathering,

- SARS may conduct a search and seizure with or without a warrant (refer to Sections 59 and 63 of the TAA) and
- enter premises unannounced, if relevant material is being kept at such premises.
- Sections 61 and 62 of the TAA set out how SARS may execute a search and seizure.

Access required in terms of law

SARS – Search and Seizure (with a warrant)

A senior SARS official may, in terms of S59 of the TAA,

- in circumstances considered relevant or necessary for the administration of any tax Act, authorise an application for a warrant.
- SARS may, under such a warrant, enter premises where relevant material is kept to search the premises and any person present on the premises and seize relevant material.
- SARS must apply to a judge or magistrate (in the case of smaller matters) for the warrant.
- The application for a warrant must be supported by information supplied under oath or solemn declaration, based on the relevant facts.

Access required in terms of law

SARS – Search and Seizure (with a warrant)

A judge or magistrate may issue the warrant, if satisfied

- there are reasonable grounds to believe that a person failed to comply with any tax obligation, or committed a tax offence; and
- relevant material likely to be found on the premises specified in the application
- may provide evidence of the failure to comply or a commission of an offence.

S61 of TAA, a SARS official exercising a power under a warrant must produce the warrant.

- If the owner of the premises or person in control of the premises is not present, the SARS official must affix a copy of the warrant to the premises in a prominent and visible place.
- Failure to produce the warrant as required entitles a person to refuse access to the premises

Access required in terms of law

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Access required in terms of law

SARS – Search and Seizure (with a warrant)

In terms of a warrant, the SARS official may, as contemplated in S61(3) of the TAA:

- Open or cause to be opened or removed, while conducting a search, anything that the official suspects to contain relevant material;
- Seize any relevant material;
- Seize and retain a computer or storage device in which relevant material is stored for as long as it is necessary to copy the material required;
- Make extracts from or copies of relevant material, and require from a person a reasonable explanation of relevant material; and
- Search any premises.

Access required in terms of law

SARS – Search and Seizure (with a warrant)

An PA who is presented with such a warrant should:

- Determine whether the warrant is valid before granting access to their premises;
- Inform the relevant client of the search and seizure; and
- Take the necessary steps to limit access solely to the relevant material, which must be described with reasonable specificity in the warrant.

It must be noted that a search and seizure in relation to Customs and Excise Duties is not governed by the TAA. Similar provisions as mentioned above are, however, contained in Section 4(4) of the Customs Act.

Access required in terms of law

SARS – Search and Seizure (without a warrant)

S63 of the TAA, a search without a warrant may be executed by a senior SARS official.

A warrantless search is only permitted if the owner or person in control of the premises so consents in writing or a senior SARS official, on reasonable grounds, is satisfied that:

- There may be imminent removal or destruction of relevant material likely to be found on the premises;
- If SARS applies for a search warrant under its statutory power to do so, a search warrant will be issued; and
- The delay in obtaining a warrant would defeat the objective of the search and seizure.

Access required in terms of law

SARS – Search and Seizure (without a warrant)

Before carrying out the search, a SARS official must inform the owner or person in control of the premises what the legislative basis is for the search and of the alleged failure to comply with an obligation imposed under a tax Act or tax offence that is the basis for the search.

In such circumstances, the auditor should:

- Inform the relevant client of the search and seizure; and
- Take the necessary steps to limit access solely to the relevant material being seized.

Furthermore, when in doubt, PAs are encouraged to seek legal advice to ensure that appropriate action is taken in any given circumstances.

Access required in terms of law

South African Police Services

SAPS officials may search and seize documents in terms of a search warrant.

Where the police official wishes to remove documents from the PAs office, regard should be given to the following:

- No legal privilege exists between an PA and the PAs client as exists in the case of certain professional relationships.
- Section 140 of the Code, read with Rule 2.6 of the Rules Regarding Improper Conduct, does not create legal privilege in favour of a PAs client. Therefore, an auditor may not lawfully refuse to hand over documents of relevance when called upon to do so by the SAPS, provided the latter have shown that they are acting within the ambit of their powers..

Access required in terms of law

South African Police Services

The relevant sections of the Criminal Procedure Act, 51 of 1977 (Criminal Procedure Act) are as follows: —Section 21 – Article to be seized **under search warrant**:

- (1) Subject to the provisions of Sections 22, 24 and 25, an article referred to in Section 20 shall be seized only by virtue of a search warrant issued –
 - (a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person or upon or at any premises within his area of jurisdiction; or
 - (b) By a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or at any premises is required in evidence at such proceedings.

Access required in terms of law

South African Police Services

(2) A search warrant issued under subsection (1) shall require a police official to seize the article in question and shall to that end authorise such police official to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.

(3) (a) A search warrant shall be executed by day, unless the person issuing the warrant in writing authorises the execution thereof by night.

(b) A search warrant may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(4) A police official executing a warrant under this section or Section 25 shall, after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant.

Access required in terms of law

South African Police Services – Without a warrant

Articles may be seized without a search warrant if

- the person concerned consents thereto, or
- if the 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 (Section 22).

Any police official requesting documentary evidence should be asked to produce a search warrant as envisaged by Section 21 of the Criminal Procedure Act.

PA's should not consent to a search or seizure without this written search warrant being produced.

However, if the 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,
- PA's may not lawfully refuse to allow the police official to search and seize any documents.

Access required in terms of law

South African Police Services – Without a warrant

In summary, where the PA is presented with a warrant by the SAPS, the PA may need to:

- Determine whether the warrant is valid before granting access to the auditor's premises;
- Inform the relevant client of the search and seizure; and
- Take the necessary steps to limit access solely to the specific information covered by the warrant

Access required in terms of law

Information Requests under PAIA

The purpose of the Promotion of Access to Information Act (PAIA) is

- to give effect to the constitutional right of access to any information held by the State and
- any information held by another person, and
- which is required for the exercise or protection of any rights.

Chapter 3 regulates the manner in which access to information should be treated.

The right to access is not automatic.

PA's are encouraged to seek legal advice to ensure that appropriate action is taken in any given circumstances.

Access required in terms of law

Information Requests under POPI

Subject to the mandatory grounds for the refusal of access contained in Chapter 4 of the PAIA, S50 of the PAIA provides that a person must be given access to any record of a private body if:

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

Access required in terms of law

Companies Act Enquires (Companies Act 1973)

S417 Summoning and examination of persons as to the affairs of the company

In any winding-up of a company unable to pay its debts, the Master or the Court, or any person appointed by the Master or the Court as a commissioner, may,

- at any time after a winding-up order has been made,
- summon before him or it,
- 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.

Access required in terms of law

Companies Act Enquires (Companies Act 1973)

Any person summoned under S417(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 or the Court may examine any person summoned under S417(1) on oath or affirmation concerning any matter referred to in that subsection, either orally or on written interrogatories, and may reduce his answers to writing and require him to sign them.

Any such person is required to answer any question put to him at the examination, notwithstanding that the answer could incriminate him, and shall, if he does so refuse on those grounds, be obliged to so answer at the instance of the Master or the Court, provided that the Master or the Court may only oblige the person in question to so answer after the Master or the Court has consulted with the Director of Public Prosecutions who has jurisdiction

Access required in terms of law

Companies Act Enquires (Companies Act 1973)

Any incriminating answer or information directly obtained, or incriminating evidence directly derived from, an examination in terms of this section shall not be admissible as evidence in criminal proceedings in a court of law against the person concerned or the body corporate of which he is or was an officer, except in criminal proceedings where the person concerned is charged with an offence relating to

- i) The administering or taking of an oath or the administering or making of an affirmation;
- ii) The giving of false evidence;
- iii) The making of a false statement; or
- iv) A failure to answer lawful questions fully and satisfactorily.

Access required in terms of law

Companies Act Enquires (Companies Act 1973)

The Master or the Court may require any such person

- to produce any books or papers in his custody or under his control relating to the company
- but without prejudice to any lien claimed with regard to any such books or papers, and
- the Court shall have power to determine all questions relating to any such lien.

If any person who has been duly summoned under subsection (1), and

- to whom a reasonable sum for his expenses has been tendered and agreed to between the parties,
- fails to appear before the Master or the Court at the time appointed by the summons
- without a lawful excuse made known to the Master or the Court at the time of the sitting and accepted by the Master or the Court,
- the Master or the Court may cause such person to be apprehended and brought before him or it for examination.

Access required in terms of law

Companies Act Enquires (Companies Act 1973)

Any person summoned by the Master under subsection (1) shall be

- entitled to such witness fees as he would have been entitled to if he were a witness in civil proceedings in a magistrate's court.

Any person who applies for an examination or enquiry in terms of this section or S418 shall

- be liable for the payment of the costs and expenses incidental thereto,
- unless the Master or the Court directs that the whole or any part of such costs and expenses shall be paid out of the assets of the company concerned.

Any examination or enquiry under this section or S418 and any application therefore shall be private and confidential, unless the Master or the Court, either generally or in respect of any particular person, directs otherwise.

For practical purposes, the above provisions relating to S417 enquiries apply also to an PA to whom a summons has been served in respect of his working papers.

Access required in terms of law

Companies Act Enquires (Companies Act 2008)

In terms of S176 of the Act,

- the CIPC or the 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 or inspection carried out by them.

The powers of the Commission and the Panel, and the duties of the PA, are largely the same as those applicable under a Section 417 enquiry in terms of the Companies Act, 1973.

Access required in terms of law

Search and Seizure Laws

1. Administration of Estates Act, 66 of 1965, Section 26
 - Police official on behalf of the executor of a deceased estate.
2. Criminal Procedure Act, 51 of 1977, Sections 21 and 22
 - Police official on behalf of the State.
3. Competition Act, 89 of 1998, Sections 46 and 47
 - An inspector on behalf of the Competition Commissioner, possibly accompanied by a police official.
4. Companies Act, 71 of 2008, Sections 177, 178 and 179
 - Police official. Authorised person.
5. Consumer Protection Act, 68 of 2008, Sections 103 and 104
 - Authorised person.

Access required in terms of law

Search and Seizure Laws

6. Customs and Excise Act, 91 of 1964, Section 4

- Customs and Excise officers, who may be accompanied by an assistant officer and/or police official.

7. Electronic Communications and Transactions Act, 25 of 2002, Sections 81 and 82

- Cyber inspector, who may be accompanied by a police official

8. Financial Intelligence Centre Act, 38 of 2001, Section 70

- Police official. Authorised person.

9. Insolvency Act, 24 of 1936, Section 69

- Police official on behalf of the trustee or on behalf of the insolvent estate.

Access required in terms of law

Search and Seizure Laws

10. Inspection of Financial Institutions Act, 80 of 1998, Section 5

- An inspector appointed by the registrar of the Financial Services Board or the Medical Schemes Council.

11. Public Audit Act, 25 of 2004, Section 16

- Auditor-General or an authorised auditor, who may be accompanied by a police official.

12. Prevention and Combating of Corrupt Activities Act, 12 of 2004, Section 23

- National Director or authorised person.

13. Financial Markets Act, 19 of 2012, Section 84

- Financial Services Board official.

14. Tax Administration Act, 28 of 2011, Sections 61-63

- SARS official

Access required in terms of law

Inspections by Regulators in Other Foreign Jurisdictions

Regulatory authorities in foreign jurisdictions, pursuant to their legal or regulatory powers, might require access to an PA/auditor's working papers for purposes of inspections in respect of work performed for an entity registered (or operating) in that foreign jurisdiction.

The auditor should consider their firm's established policies and procedures to assist in managing the risks associated with granting access to his or her working papers, especially if the firm is part of a network firm.

The auditor is also advised to seek legal advice when granting a foreign regulatory authority access to working papers .

Access required in terms of the profession

- International Standards
 - ISA 600 Special Considerations – Audit of Group FS (including component auditor)
 - ISA 510 Initial Engagement – Opening Balances (access MIGHT be requested)
 - ISAE 3000 (Revised) Assurance Engagements Other than Audits and Reviews of Historical Financial Information

Access required in terms of the profession

Access required by IRBA

- Inspections
- Investigations
- Disciplinary Hearings

Access required by AGSA

Access required in terms of contractual agreement

- Joint engagements
- Allow sufficient access to allow each party to perform their duties adequately

Where access is at practitioners' discretion?

POPI Information Officer

Authorisation letter

Acknowledgement letter/disclaimer

Where access is at practitioners' discretion?

Consider: Confidentiality of client information (security registers of client)

- Need written consent

Authorisation letter, include:

- 1) Name/s of the party/parties requesting access to the working papers.
- 2) The purpose for which the access to the working papers has been requested.
- 3) Any specific terms relating to the granting of access, such as:
Any working papers to which the practitioner may decide not to provide access; and
Conditions under which the access will be granted, for example, under supervision at the Practitioners offices.
- 4) Reference to the acknowledgement letter which the PA will request from the third party, in which the third party agrees to the terms imposed by the PA.
- 5) Confirmation of the client's authorisation to grant access, and the client's understanding of the terms.
- 6) A clear statement that the PA is indemnified, and by whom, against any claims that may arise from granting access to that PA working papers.
- 7) The signatures of all relevant parties, who must be duly authorised.

Where access is at practitioner's discretion?

Consider - The duty of care to third parties

- The granting of access to working papers might give rise to a duty of care to third parties that may not otherwise have existed.
- When working papers are prepared, the PA applies professional judgement, considers issues of materiality and examines amounts and disclosures in the financial statements (or other financial or non-financial information) on a test basis for specific purposes (if audited for example).
- Third parties, however, might interpret the working papers differently because of their varying objectives and requirements.
- The PA should make it clear to third parties that it would be inappropriate for them to place reliance on working papers for purposes other than those for which they were created.

Where access is at practitioner's discretion?

Consider - Limitation on reliance by third parties

- Other than in a group situation consider obtaining
 - a signed acknowledgement letter (also referred to as a —hold harmless or —release letter) from the third party. (Documents the terms under which access is granted and the third party's acceptance of those terms) and
 - a disclaimer letter from the third party (to explain the purpose for which they were prepared and stating that no reliance should be placed on them for any other purpose)

Where access is at practitioner's discretion?

Consider - Limitation on reliance by third parties

- Consideration should be given to including the following matters in the acknowledgement letter,
 - 1)The purpose for which access to the working papers is requested.
 - 2)An acknowledgement that the third party understands the purpose for which the working papers were prepared, that they were not prepared for use by third parties and that they may therefore not be suitable for the purposes for which the third party intends to use them.

Where access is at practitioner's discretion?

Consider - Limitation on reliance by third parties

Agreement on any terms regarding the granting of access may include, for example:

- 1) Any working papers to which the PA may decide not to provide access;
- 2) Conditions under which access will be granted, e.g. under supervision at the PAs offices; and
- 3) An acknowledgement that the working papers will not be made available by the third party to other parties without the PAs written permission.
- 4) An acknowledgement by the third party that the PA does not owe a duty of care to persons who use the working papers and to third parties merely by reason of granting access to the working papers, and
- 5) a clear statement that the PA is indemnified by the persons requiring access to the working papers against any claims that may result from the granting of access.
- 6) Claims arising from causes other than the granting of access are not covered by this indemnity.
- 7) Confirmation of the third party's understanding and acceptance of the terms.
- 8) The signatures of all relevant parties, who must be duly authorised.

Potential Risk in granting access to 3rd Parties

Establish reason for request

Examples

- Access granted to client
- Access granted to successor practitioners
- Access granted to prospective purchasers, investors, and lenders

Policies and Procedure regarding access

- ISQMI and POPI Considerations
 1. Responsibility for granting access to working papers on behalf of the firm or engagement partner
 2. Circumstances where access may be required by law
 - Obtaining legal advice
 - Informing client
 - Restricting access to subpoena
 3. Inspection of working papers
 4. Format: electronic/hardcopy
 5. Requests for copies
 6. Timing and period of access
 7. Location
 8. Cost
 9. Requirements of Laws and regulations

Engagement Letters (an example)

We have previously audited the financial statements of XYZ Company (the —Company||) for the year ended , and issued our report thereon dated . We have not audited any financial statements for any dates or periods subsequent to .

You have consented to our responding fully to the enquiries of ABC Firm, as successor independent auditors for XYZ Company, and to providing access to our working papers prepared in connection with the audit referred to above. You understand and agree that access to our working papers is undertaken solely for the purpose of obtaining an understanding about XYZ Company and that certain information about our audit will be made available to assist ABC Firm in planning the audit of the financial statements of XYZ Company.

Engagement Letters

XYZ Company also agrees to indemnify and hold harmless [Name of auditor] and its personnel from any claim by ABC Firm or any other third party that arises as a result of [Name of auditor] permitting access to its working papers in connection with this request other than those claims that may arise directly and indirectly as a result of disclosures required to be made by ABC Firm in terms of the requirements of any law, regulation, accounting or auditing standard.

Our rights and obligations in this letter will be governed by South African law. Please confirm your understanding and agreement with the foregoing by signing and dating the enclosed copy of this letter and returning it to us.

QUESTIONS

**Thank you
for your participation**