

12 October 2020

**FOR THE ATTENTION of Mr. Mkhacani Joseph Maswanganyi, Chairperson of the
Standing Committee on Finance (National Assembly)**

C/O

Per Email

TO: awicomb@parliament.gov.za

AND TO: tsepanya@parliament.gov.za

**Submission
to
Standing Committee on Finance
concerning
the Auditing Profession Act Amendment Bill**

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Dear Mr. Maswanganyi,

1. We write on behalf of Open Secrets, in response to a call for submissions issued by your office regarding the Auditing Profession Act Amendment Bill. We are both Researchers at Open Secrets and have undertaken extensive research on the role of private corporations in economic crime and State Capture.
2. Open Secrets is a non-profit organisation dedicated to investigating and pursuing accountability for economic crimes and related human rights violations. An important aspect of this work includes holding the financial sector accountable, of which auditors are an integral part. Consequently, Open Secrets is a key stakeholder and interested party, and we therefore wish to make a submission on the role of auditors; their impact on the public generally; and the importance of the Auditing Profession Act Amendment Bill in this regard.
3. In so doing, we intend to make a submission on:
 - 3.1. The evidence base for our submission in the form of a report (discussed below);
 - 3.2. Our general submissions on the Auditing Profession Act Amendment Bill; and
 - 3.3. Particular gaps or concerns that we have identified based on our evidence.

A. Open Secrets' research and findings on the auditing industry and the need for auditing reform

Auditing is a public function and a social good

4. The technical function of an audit is to verify whether the financial statements of a company fairly represent the financial position of that company, and whether they have been properly prepared. Further, auditors have a duty in terms of section 45 of the Auditing Profession Act ("**the Act**") to report 'reportable irregularities' to the Regulatory Board (IRBA). The legislative guide for registered auditors, issued by IRBA to provide clarity on the legislation, makes it clear that discovery of any bribery, fraud, corruption or kickbacks would constitute a 'reportable irregularity'.¹
5. These functions show that auditing is inherently a social utility. When functioning as it should, auditing contributes to public trust in public and privately audited entities by assuring the information they provide.² Auditing has the additional social function of providing a vital check on accounting and other abuses to protect the public at large from the costs of fraud, corruption and other financial crimes.

¹ IRBA, "Reportable Irregularities in terms of the Auditing Profession Act", *Revised Guide for Registered Auditors*, May 2015.

² Adam Leaver, Leonard Seabrooke, Saira Stausholme and Duncan Wigan (March 2020), 'Auditing with accountability: shrinking the opportunity spaces for audit failure', *University of Sheffield and Copenhagen Business School*.

6. As a result of this social function, audit failure results in substantial and far-reaching social and public costs. That auditing is a social utility requires focussing on the victims of financial malfeasance and audit failure. These are the millions of people who lose jobs, savings and livelihoods as a result of economic and financial crimes.³ They are the pensioners and investors whose savings are decimated by corporate collapse at, for example, Steinhoff and Tongaat Hulett, and the public who lose out when public money is squandered at State Owned Enterprises (“**SOEs**”).
7. As we discuss later in this submission, there is substantial evidence of systemic audit failure in both public and private sectors in South Africa. Corporate fraud and public sector corruption have thrived where auditors have failed to fulfil their professional duties. Oversight and sanctions have been insufficient to turn the tide.
8. South Africa’s experience reflects a global reality: auditing firms, particularly “the Big Four” (Deloitte Touche Tohmatsu Limited (“**Deloitte**”), Ernst & Young Global Limited (“**EY**”), KPMG International Limited (“**KPMG**”) and PricewaterhouseCoopers (“**PwC**”)), continue to generate vast profits despite being regularly implicated in audit failures which have significant public costs. In their relentless pursuit of profit and bonuses, the social utility of the audit function is often obscured.⁴
9. Open Secrets advocates for accountability for these firms. We urge the Committee to reject the argument that public anger at audit failures is misplaced because the public expects more than auditors can deliver – the so called “expectations gap”. The public’s anger and demand for reform is better understood as a result of auditors’ failure to deliver on legitimate expectations that it is their job to assure corporate financial probity – there is an “accountability gap”.⁵

South Africa needs audit reform

10. In July 2020, Open Secrets published the *Corporations and Economic Crime Report (CECR): The Auditors* (“**the report**”, attached hereto as “**OpenSecrets 1**”). The report provides a comprehensive assessment of the role of auditors in economic crime and was widely reported upon in the South African media. It provides evidence of systemic audit failure in South Africa through the case studies of the VBS Bank (“**VBS Heist**”); Tongaat Hulett and Steinhoff; and State Capture at Eskom, South African Airways (“**SAA**”), Estina and the South African Revenue Service (“**SARS**”). These case studies provide prominent examples of audit failure, and on occasion the participation of auditors in financial crimes. They all expose the need for reform of the industry and its regulatory framework.
11. The auditing industry, along with financial institutions and large law firms sits at the centre of the global financial economy which is in crisis as a result of an ever-dwindling pool of people that benefit from

³ Richard Brooks, *Bean Counters: The Triumph of the Accountants and How They Broke Capitalism* (Atlantic Books, London: 2018).

⁴ Adam Leaver, Leonard Seabrooke, Salla Stausholme, Duncan Wigan (2020), *Auditing with Accountability: Shrinking the Opportunity Spaces for Audit Failure*, (University of Sheffield & Copenhagen Business School), page 30.

⁵ Adam Leaver, Leonard Seabrooke, Salla Stausholme and Duncan Wigan (March 2020), ‘Auditing with accountability: shrinking the opportunity spaces for audit failure’, *University of Sheffield and Copenhagen Business School*, page 3.

its activities. In South Africa, the need for reform of the audit industry, is emphasised by deepening poverty and inequality. South Africa remains among the most unequal societies in the world.⁶ Between 2011 and 2015, income of the bottom 10% of South African earners fell by 25%, while the earnings of the top 1% *increased* by 48%.⁷ Wealth inequality is even starker, with the wealthiest 3500 South Africans holding as much wealth as the poorest 32 million South Africans.⁸ Inequalities of income, wealth and opportunity are also deeply gendered and racialised.⁹

12. While the reasons for the chasm between the 1% and the impoverished majority are many, a crucial factor is a globalised economy, built and maintained by powerful corporations that entrench the privilege and impunity of the wealthy and increasingly engage in economic crime. The influential economist Thomas Piketty states: 'Financial opacity is one of the key drivers of rising global inequality'¹⁰.
13. Auditors should act as a key check on these powerful corporations, at the very least contributing to greater financial probity, transparency and accountability from their private and public clients. The evidence illustrates that through complicity or negligence, auditors have failed to do this in many instances. These failures have enabled corporate elites and public officials to act in their own financial interests at the expense of the public.
14. For example, the report reflects allegations that auditors from Deloitte failed to report 'reportable irregularities', including fraud and possibly other financial crimes, at both Steinhoff and Tongaat Hulett. Both companies suffered catastrophic collapse as the result of fraud and other malfeasance by management. The allegations against the auditors and management are currently under investigation by the IRBA and the National Prosecuting Authority ("**the NPA**").
15. The implosion of Steinhoff, as a result of systemic fraud by a group of executives, resulted in an overnight loss of R120 billion to the detriment of 948 pension funds. The Government Employees Pension Fund alone lost more than R21 billion. In the case of Tongaat Hulett, various misstatements in the financial accounts meant that the company's assets were overstated by over R10 billion,¹¹ resulting in the value of the company plummeting overnight, and over 10,000 employees losing their jobs.
16. The forensic audit reports into what happened at both Steinhoff and Tongaat, compiled by PwC, have been kept secret by these respective companies, contrary to the public's right to know what happened, how it happened and who were responsible for these serious financial crimes. Without this information

⁶ Dennis Webster (19 November 2019), 'Why South Africa is the world's most unequal society', *Mail and Guardian*, URL: <https://mg.co.za/article/2019-11-19-why-sa-is-the-worlds-most-unequal-society> [Accessed 30 April 2020].

⁷ Stats SA, *Inequality Trends in South Africa – a Multidimensional Diagnostic of Inequality*, November 2019, pg. 65.

⁸ Aroop Chatterjee, Léo Czajka and Amory Gethin (April 2020), *Estimating the distribution of household wealth in South Africa* WID.world Working Paper No 2020/06, Southern Centre for Inequality Studies and World Inequality Lab.

⁹ Stats SA, *Inequality Trends in South Africa – a multidimensional diagnostic of inequality*, November 2019, page 6.

¹⁰ Thomas Piketty, quoted in ICIJ (8 February 2015), 'Banking giant HSBC sheltered murky cash linked to dictators and arms dealers', URL: <https://www.icij.org/investigations/swiss-leaks/banking-giant-hsbc-sheltered-murky-cash-linked-dictators-and-arms-dealers/> [Accessed 30 April 2020].

¹¹ Michael Marchant and Mamello Mosiana *CECR: The Auditors* (2020) Open Secrets.

being made publicly available there is no transparency nor accountability, and history is likely to repeat itself.

17. A further example is the case of VBS Mutual Bank. The NPA has brought charges against the former KPMG auditor responsible for the VBS account, Siphso Malaba, who is alleged to have helped cover up the looting of VBS bank in exchange for personal financial benefits. An independent forensic report concluded that Malaba 'gave an unqualified audit opinion in circumstances where he knew the financial statements were misstated. He also gave a regulatory audit opinion which he knew to be false'¹². In the case of VBS, the public's interest in knowing how VBS was looted and who was responsible is manifest and this knowledge leads to greater accountability, ensuring it's less likely to happen again.
18. Audit failure is also a significant problem at public entities. From 2012 to 2017, PwC were the external auditors at SAA. Every year, PwC signed off on SAA's financial statements. Yet, when the Auditor General's office took over the audit in 2017 with the airline in crisis, it found that PwC and Nkonki (its partner on the audit) had not identified eight major misstatements and that the board had failed to identify and report irregular and fruitless expenditure and failed to accurately account for inventory and maintenance of aircraft. The Auditor General also confirmed that SAA was clearly in breach of the Public Finance Management Act.¹³ The IRBA investigated and concluded that the auditors 'did not appropriately respond to the risk related to procurement in terms of the requirements of international standards on auditing... and failed to disclose noncompliance with legislation regarding procurement in the joint audit.'¹⁴ PwC and Nkonki were given the maximum fine - a paltry R200 000 - of which R50 000 was suspended. This fine is woefully inadequate when one considers the R19 million that PwC and Nkonki were paid for their work at SAA. This fine runs the risk of becoming a cost of making profits since the profit of contravening the law, losing its deterrent effect entirely. It is also not commensurate with the harm of a failed audit at a state-owned enterprise that has received billions in public funds for bailouts over a period of years. This submission will return to the need for harsher sanctions for the purpose of greater deterrence later on. Also noteworthy is that the IRBA initially refused to disclose the names of the companies publicly, despite the public interest in knowing.
19. Linked to the above, audit firms have also been implicated in wrongdoing linked to State Capture. State Capture has had a devastating impact on the country's financial wellbeing. Taking into account the money lost directly to corruption, low or non-existent economic growth, lost jobs, and an explosion of public debt and borrowing costs, estimates range from the conservative R500 billion to R1.5 trillion.¹⁵ Further, austerity measures enforced to appease credit-ratings agencies have hit vulnerable South Africans the hardest.

¹² Terry Motau SC, *The Great Bank Heist: Investigator's Report to the Prudential Authority*, 30 September 2018, page 18.

¹³ Auditor-General of South Africa (8 December 2017), 'Report of the Auditor-General', as contained the South African Airways Annual Financial Statements for year ended 31 March 2017.

¹⁴ Ann Crotty (25 October 2017), 'EXCLUSIVE: Another major auditing firm drawn into SAA Scandal', *Business Day*, URL:

<https://www.businesslive.co.za/fm/fm-fox/2017-10-25-exclusive-another-major-auditing-firm-drawn-into-saa-scandal/> [Accessed 17 April 2020].

¹⁵ Marianne Merten (1 March 2019), 'State Capture wipes out a third SA's R4,9 trillion GDP – never mind lost trust, confidence, opportunity', *Daily Maverick*, URL:

20. One example of the role of auditors in State Capture is the role of a KPMG auditor Jacques Wessels in auditing Linkway Trading. Looted funds from the Estina Dairy Project were laundered via the books of Linkway, and the costs of a luxurious Sun City wedding were used to do it. On 28 March 2019, the IRBA made a ruling striking Wessels off the auditor's register, finding that Wessels displayed 'egregious dishonesty' and had been an 'active participant in the subterfuge'.¹⁶ The decision to strike Wessels off the register was welcome, but highly unusual and possibly the result of significant public outrage at the nature of this misconduct. It is this kind of genuine accountability, which remains rare, that must be pursued in all cases without exception.
21. Finally, a consistent theme throughout the CECR report is the evidence that in many cases, junior auditors attempted to flag or report wrongdoing, but were silenced by a senior partner at their audit firm. We submit that this speaks to an institutional culture issue within large audit firms in particular that is an important contributory factor to audit failure. It also illustrates a deficiency in internal processes of governance and control that would allow for employees to safely report instances of wrongdoing. This is why both registered auditors and their firms are deserving of sanction in the case of dishonesty, fraud or other wrongdoing.

A global crisis

22. We wish to draw the Committee's attention to the fact that the Auditing Profession Act Amendment Bill ("**the Amendment Bill**") is being considered in the context of global efforts to deal with the concerns outlined above.
23. The frequency and concurrency in revelations of financial malfeasance and crime facilitated by auditors has led to a cacophony of worldwide calls for the urgent reform of the auditing industry. The United Kingdom's regulator, the Financial Reporting Council ("**FRC**"), has given the Big Four until 2024 to separate their auditing and consulting business in order to ensure greater professional scepticism, secure public interest and improve audit quality.¹⁷ In Germany, the conduct of EY during the \$2 billion Wirecard fraud (possibly the largest fraud in that country's history) is under investigation and has prompted heated debate about the need for audit reform beyond mandatory rotation of firms.¹⁸ Similar debates are happening across the European Union.
24. The call for reform is also happening as a result of a blurring of the lines between the auditing profession and the consulting industry: auditing firms are doing an increasing amount of consulting work for the corporations they audit, as well as for governments. They advise on anything ranging

¹⁶ "Linkway Trading Auditor deregistered – ordered to contribute to costs", Independent Regulatory Board for Auditors (IRBA), 23 March 2019. <https://www.irba.co.za/news-headlines/press-releases/linkway-trading-auditor-deregistered-ordered-to-contribute-to-costs> [accessed 23 August 2019].

¹⁷ Objectives, Outcomes and Regulation (July 2020), *Financial Reporting Council (FRC)*, URL: <https://www.frc.org.uk/getattachment/281a7d7e-74fe-43f7-854a-e52158bc6ae2/Operational-separation-principles-published-July-2020.pdf>

¹⁸ Jaclyn Jaeger (7 July 2020), 'Wirecard scandal will have cascading impact on Germany's audit, regulatory landscape', *Compliance Week*, URL: <https://www.complianceweek.com/accounting-and-auditing/wirecard-scandal-will-have-cascading-impact-on-germanys-audit-regulatory-landscape/29158.article>

from organisational restructuring to taxation, nuclear energy, and military spending.¹⁹ They are also regularly seconded into the institutions they consult for. The most profitable work is consulting to give advice to multinationals on how to establish secretive trusts and shell companies, and advice about secrecy jurisdictions and tax havens.²⁰ Global regulators are therefore increasingly concerned that the profitability of consulting presents a fundamental conflict of interest for audit firms.

25. The global push to regulate the Big Four also stems from the realisation that they hold oligopolistic power in the economy, partly because auditing is a legal requirement almost everywhere in the world.²¹ The Big Four collectively provide professional services for 99.4% of the top 500 publicly-traded companies on the New York Stock Exchange and NASDAQ.²² They hold a similar monopoly on the London Stock Exchange: in 2018, all top 100 companies on the Financial Times Stock Exchange were audited by one of the Big Four.²³ This is also reflected in South Africa; 96% of all companies listed on the Johannesburg Stock Exchange are audited by one of the Big Four firms.

26. These efforts to reform the industry will thus be watched by many other countries grappling with the need to reform and better regulate the audit industry.

27. In conclusion, the evidence and case studies of audit failure discussed above lays bare the need for urgent, far reaching reform in the industry. The report argues that these case studies help reveal structural deficiencies in the way that the industry is regulated. These deficiencies include:

- a. *A lack of independence at the IRBA and a revolving door between industry players and the regulator;*
- b. *Insufficient ability of the IRBA to impose appropriate and powerful sanctions on auditors and the firms they work for;*
- c. *Insufficient powers of investigation for the IRBA, and an imbalance in the power of the IRBA compared to the corporations it is tasked with regulating; and*
- d. *A lack of transparency on the part of the industry and the IRBA in terms of disclosure of information in the public interest.*

28. As such, the welcome efforts of Treasury and Parliament to reform the audit industry through this Amendment Bill are urgent and essential. Improving the capacity, powers, independence and transparency of the regulatory body is crucial if we are to reform an industry in crisis.

¹⁹ Richard Brooks (29 May 2018), 'The Financial Scandal No One is Talking About', The Guardian, URL: <https://www.theguardian.com/news/2018/may/29/the-financial-scandal-no-one-is-talking-about-big-four-accountancy-firms>

²⁰ *The Spider's Web: Britain's Second Empire* (2017), Directed by Michael Oswald, Produced by: Michael Oswald, John Christensen and the Tax Justice Network, URL: <https://www.filmsforaction.org/watch/the-spiders-web-britains-second-empire/>

²¹ Richard Brooks (29 May 2018), 'The Financial Scandal No One is Talking About', The Guardian, URL: <https://www.theguardian.com/news/2018/may/29/the-financial-scandal-no-one-is-talking-about-big-four-accountancy-firms>

²² 'The Complete Guide to Big Four Consulting: History, Services, Salaries and More', *Consulting.com*, URL: <https://www.consulting.com/big-4-consulting> [Accessed: 5 December 2019].

²³ Tabby Kinder (28 October 2019), 'Big Four lift UK market share as audit reform concerns grow', *Financial Times*, URL: <https://www.ft.com/content/96d4b090-f973-11e9-a354-36acbbb0d9b6>

B. General comments on Auditing Profession Act Amendment Bill

29. Open Secrets is, in general, in favour of the Auditing Profession Act Amendment Bill (“**the Amendment Bill**”). We applaud its contents and intentions, in particular, the intention to:

- 29.1. Strengthen the governance of the Independent Regulatory Board for Auditors (“**IRBA**”), including strengthening the IRBA’s independence by protecting against conflicts of interest;
- 29.2. Strengthen investigating and disciplinary processes, and the introduction of additional enforcement provisions to ensure the effectiveness of Auditing Profession Act (“**the Act**”);
- 29.3. Provide for the duty to disclose information; and
- 29.4. Provide for sanctions and additional offences.

30. We are of the opinion that the Amendment Bill does much to strengthen the auditing industry, in particular, by:

- 30.1. Eliminating conflicts of interest in the appointment of members of the IRBA, as well as providing additional requirements for membership;
- 30.2. Providing clear investigation, disciplinary and enforcement processes, as well as additional search, seizure and subpoena powers, as well as the power to issue a warrant for the purposes of a search. These changes allow the IRBA to deal with voluminous serious complaints against auditors and to do so effectively;
- 30.3. Providing for the establishment of an enforcement committee to give effect to remedies created by the Act;
- 30.4. Providing for additional safeguards in the reporting of irregularities;
- 30.5. Providing for the referral of non-audit matters for investigation, a crucial step in recognising the scope of the issues at hand and the growing range of services offered by registered auditors and their firms;
- 30.6. Providing for additional offences to enhance the effectiveness of the committees established by the Act and Amendment Bill in order to effectively regulate the auditing industry.

C. Gaps and recommendations

31. Open Secrets is of the opinion that the Amendment Bill neglects certain section or areas of the Act. In particular, the following gaps are noted:

- 31.1. The Act could be strengthened by providing clarity on the objectives of the Act, as stated in section 2 of the Act. In particular, that the Act intends to provide for the enforcement of the Act in the public interest and in order to respect, promote, protect and fulfil the Constitution, therefore recognising the role the auditing industry plays in safeguarding the public’s as well as consumers’ interests. This has been discussed extensively in Part A of this submission, which frames auditing as a public good and social utility.

31.2. Open Secrets is of the opinion that the Amendment Bill could be further strengthened by adding more provisions dealing with the importance of the auditing industry to the public, including provisions that safeguard the public interest, particularly with regards to reporting, information and governance. The Amendment Bill would be further strengthened by drawing links between the Constitution and the Amendment Bill and the Act, for example, the public's right to know, under section 32 of the Constitution, where there has been fraud, corruption and similar wrongdoing that affects the public. The IRBA's reluctance to name those found guilty in disciplinary processes, as discussed above, is anathema to these Constitutional rights.

32. Open Secrets submits that the following sections of the Act could be strengthened:

32.1. Section 9(m) should not be discretionary. It is vital to proper functioning for the Regulatory Board to have adequate risk management and internal control practices in place. We therefore suggest moving section 9(m) under section 10(3) of the Act.

32.2. The insertion of subsection (2)(g) '*an enforcement committee*' in section 20 of the Act. This is in line with the creation of the enforcement committee by the Amendment Bill.

32.3. The insertion of subsection (1)(e) '*one member of civil society*' in section 21 of the Act. Considering the impact of auditors on the public (as outlined in Part A of this submission above), there should be representation of the public on the committee for auditor ethics to ensure the public's interests are safeguarded.

32.4. Regarding section 22 of the Act, and considering the impact of auditors on the public (as outlined in Part A of this submission above), there should be representation of the public on the committee for auditing standards to ensure the public's interests are safeguarded by:

32.4.1. The insertion of subsection (1)(i) '*one member of civil society*'. This civil society representative should be chosen after an open application process.

32.4.2. The insertion of subsection (2)(c) '*consider the needs of the public and the public impact of the auditing industry generally*'.

32.5. The insertion of the words 'Within 14 days of the receipt of a written request from any client for whom a registered auditor acts as auditor or person who proposes to appoint the registered auditor as its auditor *or a member of the public who requires such information in order to exercise a right*, the registered auditor must furnish the following information:' in section 43(2) of the Act. This is in line with the Constitution and access to information jurisprudence generally. Access to the information listed in section 43(2) should not be limited to an auditor's client.

32.6. The insertion of the words 'A registered auditor may not conduct the audit of any financial statements of an entity, whether as an individual registered auditor or as a member of a firm, if, the registered auditor has or had a conflict of interest, *including where the registered auditor or firm provides or has provided services other than auditing*, in respect of that entity, as prescribed by the Regulatory Board' in section 44(6). As discussed above under Part A of this submission, a crucial and overlooked conflict of interest is where an auditor provides consulting services and audits the same client, either simultaneously or in sequence. Considering the impact on the

auditing industry and the mischief intended to be cured by the Amendment Bill, this conflict of interest should be explicitly addressed.

32.7. The addition of 'stakeholders' in the list of persons that attract liability where an auditor or auditing firm does not report a reportable irregularity under section 46(7) of the Act. As discussed above in Part A of this submission, the consequences of an auditor not reporting a reportable irregularity on the public are vast, particularly where the auditor's client is a large corporation with many employees. The public is therefore by necessity, a stakeholder.

32.8. The insertion of subsection 47(5)(f) to provide for disclosure in the public interest. This is in line with the Constitution, the Promotion of Access to Information Act 2 of 2000 and access to information jurisprudence generally. It also accords with the recognition that auditing is a public good.

33. Open Secrets submits that the following sections of the Amendment Bill could be strengthened:

33.1. Regarding the amendment (amendment 3 of the Amendment Bill) of section 11 of the Act:

33.1.1. The insertion of subsection (2A) should include a person from civil society. This is appropriate and necessary given the impact of auditors on the public (as outlined in Part A), which necessitate representation of the public on the regulatory board to ensure the public's interests are safeguarded.

33.1.2. Subsection (3) provides for the considerations that the Minister must make when appointing members of the board. These should include whether a candidate has been implicated in allegations of impropriety, including corruption, fraud and/or dishonesty, in addition, whether a particular candidate has a conflict of interest.

33.1.3. The insertion of subsection (7)(d) should read 'the qualifications *and curriculum vitae* of every person appointed'.

33.1.4. The insertion of subsection (8)(a) should read 'share, directly or indirectly, in any of the profits²⁴ or interests²⁵ of a registered auditor or registered candidate auditor'. Conflicts of interest are created where an auditor is given shares, for example, in a client's company. Alternatively, we submit that a definition of 'profit' should be included in section 1 of the Act and that this definition should include interests.

33.2. The insertion of '*and make such findings publicly available*' at the end of the sentence in section 48(7) of the Act as amended by amendment 10 of the Amendment Bill. Releasing the findings of investigations into improper conduct is in line with the Constitution, the Promotion of Access to Information Act 2 of 2000 and access to information jurisprudence generally.

33.3. The Amendment Bill version (amendment 12 of the Amendment Bill) of section 50(3) states that a hearing before the disciplinary hearing panel must be open to the public except where, in the opinion of the chairperson of the panel, any part of the hearing must be held in camera. Open

²⁴ The benefit, advantage, or pecuniary gain accruing to the owner or occupant of land from its actual use; as in the familiar phrase rents, issues and profits, or in the expression mesne profits.

²⁵ A legal interest refers to the legally enforceable right to possess or use property. The term may refer to past, present, or future interests. Legal interest may also refer to: Equitable interest, which is a legal interest that may be enforced by equitable remedies.

Secrets submits that reasons for the decision not to hold the disciplinary hearing in public must be given and made public in order to secure an open and transparent disciplinary process.

34. We wish to draw the Committees attention to a serious concern we have identified in the Amendment Bill version of section 51 of the Act. This section deals with ‘sanctions in admission of guilt processes’.

34.1. Subsection (1) provides:

‘If a registered auditor admits guilt as contemplated in section 49(4)(a), the enforcement committee must either-

(a) Caution or reprimand the registered auditor;

(b) Impose a fine on the registered auditor not exceeding the amount determined by the Minister from time to time in the Gazette; or

(c) Require the registered auditor to attend appropriate training or any other relevant non-monetary sanction or more than one relevant non-monetary sanctions.’

The current limit on fines that can be imposed is R200 000. Even if significantly increased by the Minister, these fines are likely to be seen as ‘the cost of doing business’, since the profits made from unlawful or unethical behaviour far exceed this. In addition, a caution or reprimand is not an appropriate sanction for dishonest and unethical behaviour. There is a danger that a caution will be given for serious infringements by auditors. If the auditing industry is to be transformed, there will need to be sanctions that have a deterrent effect. One way of achieving this is by quantifying the fine based on the audit firm’s profits, and attaching a percentage to this. This is done, for example, in the Competition Tribunal. This also recognises the responsibility that the audit firm, along with the registered auditor, has to ensure ethical and lawful conduct. Alternatively, there should be a minimum sanction for more serious infringements and these should be defined in section 1 of the Act. This should similarly apply in circumstances involving individual auditors – the fine imposed should be commensurate with their gross income and other benefits derived from their position as auditor; alternatively, a minimum sanction depending on their offence.

34.2. In addition to larger fines, other effective sanctions should be considered for addition in the Amendment Bill. The case studies discussed in Part A reveal a systematic failure of internal controls at the large audit firms that is a crucial contributor to audit failure and a failure to ensure lawful and honest conduct. In these situations, sanctions should extend to the auditing firm implicated. In particularly egregious cases, a temporary suspension of a firm’s license for a meaningful period of time should be considered.

34.3. Subsection (5) provides the enforcement committee with a discretion of whether or not to publish the name of the registered auditor who admitted guilt, the charge and the sanction imposed in terms of subsection (1) and (2) and a cost order in terms of subsection (4), on the Regulatory Board’s website. In order to ensure transparency and the public’s access to justice, as well as

customer's ability to choose a reputable auditor who is not engaged in corrupt or dishonest behaviour, the publishing of this information should be mandatory. This is particularly so in light of the lenient sanctions as outlined in subsection (1). There should be no secrecy in the face of unlawful or dishonest conduct. We therefore suggest the substitution of the word 'must' for the words 'may, if considered appropriate' in section 51(5) of the amended section. Such amendment would add a deterrent effect to misconduct.

34.4. Similarly, we have the same concerns with section 51B(3)(i) to (iii), as inserted by the Amendment Bill. We are, however, satisfied with the sanctions contained in section 51B(3)(iv) and (v).

35. Our last major concern is with the insertion of section 57A of the Amendment Bill. The disclosure of information, other than personal information (dealt with under section 57B of the Amendment Bill) and privileged information which can be separated or redacted, is of vital importance in combatting unlawful, criminal and/or unethical conduct. If the auditing industry is to be reformed, as it must, information must be made available to the public if it is in the public interest, as provided for in the Promotion of Access to Information Act 2 of 2000 and section 32(1)(b) of the Constitution. We therefore submit that an additional ground '(f)' be added to section 57A, which should read '*where disclosure is in the public interest*'.

D. Concluding remarks

36. We welcome the Amendment Bill and the steps it takes to ensure greater accountability and transparency in the auditing industry. We urge the Committee to consider the additional recommendations made in section C above, that we believe will contribute to the strengthening of the Act and the furthering of the stated goals of the Amendment Bill.

37. This is an important moment for the reform of auditing and the way it is regulated in South Africa. It offers the opportunity to bridge the accountability gap in the industry where auditors have consistently failed to deliver on the legitimate expectations of the public that it is their job to assure corporate and public financial probity.

38. The reforms in the Amendment Bill will ultimately contribute to a process of challenging a culture of practice which has been normalised in many auditing companies across the globe. The decisions made by this Committee and Parliament can significantly contribute to changing this practice or alternatively normalising it.

39. Kindly place on record that Open Secrets would like to make **oral submissions at the Committee meeting on Wednesday 14 October 2020**, should the Committee afford us the privilege of doing so. Please do inform us if we are able to do so.

40. Please direct any queries or requests for additional information to the contact persons whose details appear on the cover of this submission.

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Mamello Mosiana

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