

Released by SAICA: 15 November 2013

Monitoring of compliance - Section 90(2)(b) of the Companies Act, 2008

Application

Section 90(2)(b) contains prohibitions applicable to an auditor engaged to perform a statutory audit of a company or a close corporation. Section 90(2)(b) prohibits an auditor from providing certain non-audit services to the same client.

Clarification

In order to clarify whether or not the prohibitions in section 90(2)(b) apply to the *firm* appointed as the auditor or only to the *individual* Registered Auditor appointed as the designated auditor, the SAICA and the IRBA Boards jointly agreed in 2012 to approach Senior Counsel for an opinion. The Senior Counsel [opinion](#) confirmed that the provisions of Section 90(2)(b) regarding the disqualification from auditor appointment apply to both the *firm* appointed as auditor and the *individual* Registered Auditor.

Subsequent to the receipt of Senior Counsel's opinion, additional considerations came to light that SAICA's Board felt might affect the interpretation of the legislation. It decided to seek a [second opinion](#) from a Senior Counsel taking into account the new considerations. Senior Counsel confirmed the interpretation of the joint SAICA/IRBA opinion obtained, notwithstanding the additional considerations.

The opinion obtained by SAICA further confirms the implications of the interpretation as follows:

A firm is disqualified from appointment if it "habitually or regularly" performs the duties of accountant or bookkeeper, or performs related secretarial work, for the company. This provision does not preclude the auditor from doing any other non-audit work. It permits the auditor,

- *to render accounting, bookkeeping and/or related secretarial services to the company as long as it does not do so "habitually or regularly"; and*
- *to render any other services to the company.*

This implication is consistent with the provisions of section 94(8), which allow an auditor to render non-audit services, including consultancy, advisory and other services, to the company to the extent permitted by its audit committee in terms of section 94(7)(d). It simply means that the non-audit services the audit committee may permit the auditor to render to the company may not include habitual or regular accounting, bookkeeping and/or related secretarial services.

Impact analysis

An [impact analysis](#) on the application of section 90(2)(b) as referred to in the joint Senior Counsel opinion obtained by SAICA and the IRBA was conducted. The results of the impact analysis were presented to the SAICA Board for consideration and submitted to the Companies and Intellectual Properties Commission ("CIPC").

Guidance and Frequently Asked Questions (“FAQs”)

In addition to the [joint guidance](#) provided by SAICA and the IRBA during May 2013, SAICA and the IRBA have also issued [FAQs](#) to assist members with the application of section 90(2)(b).

Monitoring of compliance

Section 90 became effective on 1 May 2011. The CIPC agreed to extend enforcement of the application of section 90(2)(b) to 31 December 2013. Enforcement of the application of section 90(2)(b) will commence on 1 January 2014. [Communication](#) issued by the IRBA on 15 November 2013 confirms the enforcement date of 1 January 2014. We encourage members affected by the legislation to gain an understanding of the requirements and to implement the necessary actions to ensure compliance with the Companies Act.

Regards

Muneer Hassan

Senior Executive: Standards