

**NATIONAL TREASURY'S PROPOSED AMENDMENTS REGARDING SEARCH &  
SEIZURE AND PROTECTION OF INFORMATION**

26/2/2019

**A. SEARCH AND SEIZURE**

**Insertion of sections 48A and 48B in Act 26 of 2005 (*proposed move of sections 24A and B in Bill tabled in Parliament*)**

24. The following sections are hereby inserted in the Auditing Profession Act, 2005 after section 48:

**"Powers to enter and search premises**

48A. (1) The investigating committee, referred to in section 20(2)(e) may, for the purposes of investigating an alleged improper conduct, authorise an official of the Regulatory Board to enter any premises—

(a) with the prior consent of—

(i) in the case of a private residence, the person apparently in control of the business reasonably believed to be conducted at the private residence, and the occupant of the private residence or the part of the private residence to be entered; or

(ii) in the case of any other premises, the person apparently in control of the premises,

after informing that person that—

(aa) granting consent will enable the official to enter the premises and for the official to subsequently search the premises and to do anything contemplated in subsection (6); and

(bb) he or she is under no obligation to admit the official in the absence of a warrant; or

(b) without prior consent and without prior notice to any person if the entry is authorised by a warrant.

(2) The official authorised in terms of subsection (1)(a) to enter premises has the authority to search the premises and to do anything contemplated in subsection (6).

(3) The official exercising powers in terms of this section must do so with strict regard to—

(a) an affected person's right to—

(i) dignity;

(ii) freedom and security;

(iii) privacy; and

(iv) other constitutional rights; and

(b) decency and good order as the circumstances require, in particular by—

(i) entering and searching only such areas or objects as are reasonably required for the purposes of the investigation;

(ii) conducting the search discreetly and with due decorum;

(iii) causing as little disturbance as possible; and

(iv) concluding the search as soon as possible.

(4) An entry or search of premises in terms of this section must be done, at a reasonable time within ordinary business hours—

(a) unless the warrant authorising it expressly authorises entry at night; or

(b) in the case of a search contemplated in subsection (1)(a)(ii), if the official on reasonable grounds believes that the purpose for which the entry and search is sought, is likely to be defeated by a delay, as close to ordinary business hours as the circumstances reasonably permit.

(5) The official may be accompanied and assisted during the entry and search of any premises for an investigation by a ~~police officer or a~~ member of the investigating committee.

(6) (a) While on the premises in terms of this section, the official, for the purpose of investigating an alleged improper conduct, has the right of access to any part of the premises and to any document or item on the premises, and may do any of the following:

(i) Open or cause to be opened any strongroom, safe, cabinet or other container in which the official reasonably suspects there is a document or item that may afford evidence of the alleged improper conduct;

(ii) examine, make extracts from and copy any document on the premises;

- (iii) question any person on the premises to find out information relevant to the investigation;
- (iv) require a person on the premises to produce to the official any document or item that is relevant to the investigation and is in the possession or under the control of the person;
- (v) require a person on the premises to operate any computer or similar system on or available through the premises to—
  - (aa) search any information in or available through that system; and
  - (bb) produce a record of that information in any media that the official reasonably requires;
- (vi) if it is not practicable or appropriate to make a requirement in terms of subparagraph (v), operate any computer or similar system on or available through the premises for a purpose set out in that subparagraph; and
- (vii) take possession of, and take from the premises, a document or item that may afford evidence of the contravention concerned or be relevant to the request.

(b) The official must give the person apparently in charge of the premises a written receipt for documents or items taken as mentioned in paragraph (a)(vii).

(c) Subject to paragraph (d), the official must ensure that any document or item taken by the official as mentioned in paragraph (a)(vii) is returned to the person when—

- (i) retention of the document or item is no longer necessary to achieve the object of the investigation; or
- (ii) all proceedings arising out the investigation have been finally disposed of.

(d) A document or item need not be returned to the person who produced it if it is not in the best interest of the public or any member or members of the public for the documents or items to be returned.

(e) A person from whose premises a document or item was taken as mentioned in paragraph (a)(vii), or its authorised representative, may, during normal office hours and under the supervision of the official, examine, copy and make extracts from the document or item.

(7) The official, and any person assisting the official as mentioned in subsection (5), may use reasonable force to exercise any power in terms of this section.

(8) The law relating to privilege, as applicable to a witness subpoenaed to provide a book, document or object in a civil trial before a court applies, with the necessary changes, in relation to the production of any information, including but not limited to any working papers, statements, correspondence, books or other documents, to the investigating committee acting in accordance with this section.

(9) (a) A person who is questioned, or required to produce a document or information during an investigation in terms of this section, may object to answering the question or to producing the document or the information on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

(b) On such an objection, the official of the Regulatory Board conducting the investigation may require the question to be answered or the document or information to be produced, in which case the person must answer the question or produce the document.

(c) An incriminating answer given, and an incriminating document or information produced, as required in terms of paragraph (b), is not admissible in evidence against the person in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for a contravention of section 53 based on the false or misleading nature of the answer.

(d) An official of the Regulatory Board conducting an investigation must inform the person of the right to object in terms of this section at the commencement of the investigation.

## **Warrants**

**48B.** (1) (a) A judge or magistrate who has jurisdiction may issue a warrant for the purposes of section 48A on application by an official authorised by the Regulatory Board.

(b) The judge or magistrate may issue a warrant in terms of this section—

- (i) on written application by the official setting out under oath or affirmation why it is necessary to enter and investigate the premises; and
- (ii) if it appears to the magistrate or judge from the information under oath or affirmation that—
  - (aa) there are reasonable grounds for suspecting that improper conduct has occurred; and
  - (bb) entry and investigation of the premises are likely to yield information pertaining to the improper conduct.
- (2) A warrant issued in terms of this section must be signed by the judge or magistrate issuing it.
- (3) The official of the Regulatory Board who enters premises under the authority of a warrant must—
  - (a) if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place on the premises; and
  - (b) on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant.

## **B. PROTECTION OF PERSONAL AND OTHER INFORMATION**

### **Insertion of section 57A in Act 26 of 2005**

**29.** The following section is hereby inserted in the Auditing Profession Act, 2005 after section 57:

#### **"Protection of information**

**57A.** (1) The Regulatory Board must in respect of personal information in its possession or under its control comply with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

(2) (a) An official of the of the Regulatory Board or a member of any committee, envisaged in this Act, may not disclose to any person not in the service of the Regulatory Board any information obtained in the performance of functions under this Act.

- (b) Despite paragraph (a), an official may disclose information—
- (i) for the purpose of enforcing compliance with this Act or any order made in terms of this Act;
  - (ii) when required to do so by a court; or
  - (iii) if the Regulatory Board is satisfied that it is in the public interest."