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## INDEPENDENT REGULATORY BOARD FOR AUDITORS

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### LEGAL DEPARTMENT: REPORTABLE IRREGULARITIES

#### Registered Auditors and the Special Voluntary Disclosure Programme

Johannesburg / 5 September 2016

The Special Voluntary Disclosure Programme (SVDP) for the voluntary disclosure of offshore assets and income - in terms of the amendments to the Exchange Control Regulations, 1961 - will apply from **1 October 2016 until 31 March 2017**.

This communique provides guidance on the process to be followed should an audit client approach its auditor with details regarding a contravention that might qualify for relief under the SVDP and request assistance in submitting an application under the programme. The same guidance applies where a registered auditor (RA) identifies a contravention that occurred or is occurring and might possibly qualify for relief under the SVDP. Under such circumstances, the RA might conclude that a reportable irregularity (RI) has occurred or is occurring, triggering a reporting responsibility in terms of Section 45 of the Auditing Profession Act, 2005 (APA). In this regard, RAs are reminded that the IRBA's Revised *Guide for Registered Auditors on Reportable Irregularities* provides guidance in terms of determining whether an RI exists and what an RA's reporting obligations are under such circumstances.

The legislation that brings the SVDP into force does not override an RA's responsibility to report RIs to the IRBA in terms of the APA. The IRBA, in turn, has a statutory obligation to onward report all continuing RIs it receives to regulators deemed to be appropriate. Regarding all SVDP-related RIs received, the IRBA, the South African Reserve Bank (SARB) and the South African Revenue Service (SARS) have agreed to establish a separate process for the IRBA's onward reporting. This is to ensure that both SARS' and the SARB's VDP units are given the opportunity to deliberate the merits of these SVDP-related RIs before they are distributed (if need be) to any of the enforcement arms of the SARB or SARS for further investigation, as deemed necessary.

The starting point in the process is a disclosure by the client, or detection by the RA, of a matter that potentially qualifies for relief under the SVDP. The RA must then evaluate whether this matter constitutes an RI in terms of the APA. If it does and the client has either requested the RA's assistance in applying for relief under the SVDP or has demonstrated that an application is in progress, then the RA must clearly mark the first page of the first RI report to the IRBA with the term '**Special Voluntary Disclosure Programme**'.

Should the RI involve a relatively simple SVDP application where the period from when the RA submits the first RI report to when a proper application has been submitted to the SARB and/or SARS under the SVDP is less than 30 days, then the RA may, as a consequence of the SVDP application having been submitted, conclude that 'the suspected reportable irregularity is no longer taking place and adequate steps have been taken for the prevention of any loss as a result thereof'. This will then result in the IRBA having no obligation to notify either the SARB or SARS of the RI in question. The RA must, however, clearly endorse the first page of the second report with the term '**Special Voluntary Disclosure Programme**'.

In the case of a more complex SVDP application, work on the application may still be ongoing when the RA submits the second RI report to the IRBA. Under such circumstances, the RA will not be in a position to report that the RI is no longer taking place. Should this be the case, in the second report the RA must then briefly set out the work that has been done towards submitting the SVDP application and provide a confirmation that, to the best of the RA's knowledge, the client is still intending to submit such an SVDP application to the relevant authorities. The RA must then also clearly endorse the first page of the second report with the term '**Special Voluntary Disclosure Programme**'.

For all second reports received regarding SVDP-related RIs, the IRBA will be liaising with SARS' VDP office in order to verify the status of the relevant SVDP applications that are mentioned in these reports. The IRBA will then also request feedback from SARS and the SARB in terms of the proposed actions to be taken (if any) in relation to such RIs received.

The IRBA wishes to stress that the abovementioned process does not apply to matters outside the SVDP and that it has been specifically designed to operate within the framework of the APA. Thus, for example, if a company has defrauded its customers on a large scale and not declared its income for tax purposes, the process explained herein will not apply. In such a case, the RA must follow the normal RI process and, if necessary, the IRBA will notify the appropriate regulators. Equally, the SARB's and SARS' normal internal processes of risk assessment and identification of persons for investigation will continue for the duration of the SVDP. Please note that the process described above will only become effective on 1 October 2016 and lapse on 31 March 2017, a period that corresponds with the allowed timeframe during which SVDP applications may be submitted.

The IRBA also draws attention to the SARS' website ([www.sars.gov.za](http://www.sars.gov.za)) where questions and answers on SVDPs, media statements issued by National Treasury on 24 February, 12 April and 20 July 2016 respectively in relation to this SVDP and the Guide for the Voluntary Disclosure Programme can be found. There is also a quick link on the home page of the SARB's website ([www.resbank.co.za](http://www.resbank.co.za)) that provides additional information on this SVDP. RAs should also refer to the Financial Intelligence Centre (FIC) website ([www.fic.gov.za](http://www.fic.gov.za)) for any future communication and guidance that may be issued by the FIC in relation to this SVDP.

The IRBA trusts that the process set out above will assist RAs and their clients. Should RAs have any queries regarding the process or require further guidance, they should contact the Director: Legal at IRBA on 087 940 8804 or via e-mail at [joconnor@irba.co.za](mailto:joconnor@irba.co.za). Queries may also be directed to the VDP arms of the SARB and SARS. The SARS' VDP Unit may be contacted at [vdp@sars.gov.za](mailto:vdp@sars.gov.za) or telephonically on 0800 864 613. The SARB unit can be contacted via email at [SARB-SVDP@resbank.co.za](mailto:SARB-SVDP@resbank.co.za) or telephonically on 012 313 3951.

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**About the IRBA**

*The objective of the IRBA is to endeavour to protect the financial interests of the South African public and international investors in South Africa through the effective and appropriate regulation of audits conducted by registered auditors, in accordance with internationally recognised standards and processes.*