

THE ACCOUNTANTS ACT

No. 15 of 2008

Date of Assent: 24th December, 2008

Date of Commencement: 30th December, 2008

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A N A C T of Parliament to provide for the establishment, powers and functions of the Institute of Certified Public Accountants of Kenya and the Kenya Accountants and Secretaries National Examinations Board; to provide for the examination of accountants and company secretaries and for the registration of accountants, and f o r connected purposes

ENACTED by the Parliament of Kenya, as follows–

PART I PRELIMINARY

- Short title. **1.** This Act may be cited as the Accountants Act, 2008.
- Interpretation. **2.** (1) In this Act, unless the context otherwise requires–
- "accountant" means a person registered as an accountant under the provisions of section 24 of this Act;
- "annual licence" means an annual licence issued pursuant to section 22;
- "chairman" means the chairman of the Institute, and includes a person appointed under paragraph 2 of the First Schedule to act as chairman;
- Cap.485A "Capital Markets Authority" means the Authority established under section 5 of the Capital Markets Act;
- "Certified Public Secretary" means a member of the Institute of Certified Public Secretaries of Kenya;
- "colleges of technology" means institutions involved in the training of accountants and secretaries;
- "Council" means the Council of the Institute

established under section 9;

"Disciplinary Committee" means the committee established under section 31;

"Examinations Board" means the Kenya Accountants and Secretaries National Examinations Board established under section 14;

"examination offence" means an offence as prescribed by section 42 of this Act;

"firm" means a sole proprietorship or partnership established by members in practice;

"Institute" means the Institute of Certified Public Accountants of Kenya established under section 3 of this Act;

"Institute of Certified Public Secretaries of Kenya" means the Institute of that name established under the Certified Public Secretaries of Kenya Act;

"Minister" means the Minister for the time being responsible for matters relating to finance;

"practising certificate" means a practising certificate issued pursuant to section 21 ;

"register" means the register kept pursuant to section 28; and

"Registration Committee" means the Committee established under section 13.

(2) For the purpose of this Act–

- (a) a person is registered if his name is recorded in the register pursuant to section 28 (1) (a) of this Act;

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- (b) a person is not registered if his registration is cancelled and particulars of the cancellation are recorded in the register pursuant to section 28 (1) (c) of this Act; and
 - (c) a person is registered if the fact of the restoration of his registration is recorded in the register pursuant to section 28 (1) (d) of this Act.

PART II ESTABLISHMENT OF VARIOUS BODIES

A - Institute of Certified Public Accountants of Kenya

Establishment of Institute.

3. (1) There is established an Institute to be known as the Institute of Certified Public Accountants of Kenya.

(2) The Institute—

- (a) shall be a body corporate, capable of suing and being sued in its corporate names;
- (b) shall have a common seal which shall be kept in such manner as the Council may direct;
- (c) may with the prior approval of the Minister, borrow, lend or otherwise raise money in such usual manner, including by way of executing securities and guarantees, as it may from time to time determine;
- (d) may acquire, hold, develop and dispose of movable or immovable property;
- (e) may acquire, hold and dispose of investments in other enterprises subject to approval by the Minister for the time being responsible for finance.

(3) All courts, judges and other persons acting judicially shall take judicial notice of the seal of the Institute affixed to a document and shall presume that it was duly affixed.

(4) The provisions of the First Schedule shall have effect with respect to the Institute.

Membership of
the Institute.

4. (1) Each person who is registered is a member of the Institute.

(2) The members of the Institute shall be divided into the following classes, namely—

- (a) Fellows, comprising those persons who become Fellows pursuant to an invitation under subsection (3) each of whom shall be titled "Fellow of the Institute of Certified Public Accountants of Kenya" (designatory letters F.C.P.A. (Kenya);
- (b) full members (comprising those members registered under section 24 but who are not Fellows) each of whom shall be titled "Member of the Institute of Certified Public Accountants of Kenya" (designatory letters C.P.A. (Kenya); and
- (c) associate members, comprising persons eligible to be registered under section 26 but who do not meet all the requirements prescribed under subsection (1) of that section.

(3) Where the Council considers that a member of the Institute has fulfilled such requirements, if any, for admission into Fellowship as the Council may prescribe, the Council may invite such member to become a Fellow of the Institute.

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- (4) Associate members shall be entitled to such rights of membership as the Minister may, in consultation with the Council, by notice in the Gazette prescribe.
- Membership fees. **5.** The members of the Institute as specified in section 4(2) shall pay such fees and subscriptions as the Council may from time to time determine.
- Honorary Fellows. **6.** (1) Where the Council considers that a person, not being a member of the Institute has rendered special services to the Institute or the accountancy profession, the Council may invite such a person to become an Honorary Fellow of the Institute.
- (2) An Honorary Fellow shall not be a member of the Institute.
- Chairman of the Institute. **7.** (1) There shall be a chairman of the Institute who shall be elected in the manner provided in paragraph 1 of the First Schedule.
- (2) A member seeking election as chairman shall be a person who –
- (a) has been a member of the Institute for a continuous period of not less than seven years;
 - (b) has served on the Council or its Committees for at least one year; and
 - (c) has not be disqualified under the provisions of the Second Schedule.
- Functions of the Institute. **8.** The functions of the Institute shall be to–
- (a) promote standards of professional competence and practice amongst members of the Institute;
 - (b) promote research into the subjects of
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accountancy and finance and related matters, and the publication of books, periodicals, journals and articles in connection therewith;

- (c) promote the international recognition of the Institute;
- (d) advise the Examinations Board on matters relating to examinations standards and policies;
- (e) advise the Minister on matters relating to financial accountability in all sectors of the economy;
- (f) carry out any other functions prescribed for it under any of the other provisions of this Act or any other written law; and
- (g) do anything incidental or conducive to the performance of any of the preceding functions.

B - Council of the Institute

The Council.

9. (1) The Institute shall be governed by a Council to be known as the Council of the Institute.

(2) Subject to this Act, all acts and things done in the name of, or on behalf of, the Institute, by the Council or with the authority of the Council shall be deemed to have been done by the Institute.

(3) The Council shall issue standards of professional practice, including accounting and auditing standards, which shall form the basis of accountancy practice for members of the Institute in the preparation, verification and auditing of financial statements.

(4) The Council may with the approval of the Minister,

issue by-laws, regulations and guidelines to govern matters affecting the operations of the Institute and practice by members of the Institute.

Committees of councils.

10. (1) The Council may establish such committees as are necessary for the performance of the functions of the Institute and may, subject to the provisions of this Act, delegate powers conferred on it to such committees.

(2) The provisions of the Second Schedule shall have effect with respect to the Council.

Membership of the Council.

11. The Council shall consist of eleven members as follows—

- (a) a chairman elected in accordance with section 7;
- (b) one member to represent the Ministry responsible for matters relating to finance;
- (c) one member to represent the Capital Markets Authority;
- (d) one member to represent the Examinations Board;
- (e) one member appointed by the Minister to represent a profession other than accountancy; and
- (f) six other members elected in the manner provided in the Second Schedule.

Secretary to the Council.

12. (1) There shall be a Secretary to the Council who shall be appointed by the Council.

(2) The Secretary to the Council shall hold and vacate the office of Secretary in accordance with the terms of the instrument of appointment to that office.

(3) In addition to the functions which he is required to exercise and perform by or under this Act, the Secretary to the Council shall exercise and perform such other functions as the Council may, from time to time, determine.

Registration
Committee.

13. (1) There is established a Registration and Quality Assurance Committee (hereinafter known as the Registration Committee) consisting of seven members to be appointed by the Minister as follows—

- (a) a chairman;
- (b) one person to represent the Ministry responsible for finance;
- (c) one person nominated by the Examinations Board;
- (d) one person nominated by the Kenya National Audit Office;
- (e) two persons nominated by the Council to represent the Institute; and
- (f) one person, not being a member of the Institute, nominated by the Council to represent the users of accountancy services.

(2) The functions of the Registration Committee shall be to—

- (a) receive, consider and approve applications for registration as an accountant and grant of practising certificates and annual licences in accordance with the provisions of this Act;
- (b) monitor compliance with professional, quality assurance and other standards published by the Council for observance by

the members of the Institute;

- (c) prescribe regulations to govern quality assurance programmes, including actions necessary to rectify deviations from published standards;
- (d) where appropriate and based on the results of a quality assurance review, recommend to the Council that a member's conduct be referred for inquiry under section 32;
- (e) advise the Council on matters pertaining to professional and other standards necessary for the achievement of quality assurance; and
- (f) perform any other functions incidental to the fulfilment of its objectives under this Act.

(3) In the performance of its functions under this section, the Registration Committee may undertake such investigations as it deems appropriate, and may requisition evidence, examine records and documents prepared or held by, or likely to be availed to, the member under investigation.

(4) Where the Registration Committee makes a recommendation under subsection (2) (d) the Council shall refer the matter for inquiry under section 32.

(5) The Disciplinary Committee shall consider as evidence the results of the investigation undertaken by the Registration Committee in an inquiry referred to it under subsection (4).

(6) The Council shall provide the Registration Committee with such facilities and resources as are necessary to enable it competently discharge its functions.

(7) In the exercise of its functions under this Act, the Registration Committee shall regulate its own procedure and shall not work under the direction of any person or persons.

(8) The Secretary to the Council shall serve as the Secretary to the Registration Committee, and may, with the consent of the person presiding at a meeting, take part in the deliberations on any matter arising at the meeting, but shall not be entitled to vote on any such matter.

(9) The provisions of the Third Schedule shall have effect with respect to the Registration Committee.

C - Kenya Accountants and Secretaries National Examinations Board

The Examinations Board.

14. (1) There is established a board to be known as the Kenya Accountants and Secretaries National Examinations Board.

(2) The Examinations Board—

- (a) shall be a body corporate;
- (b) shall have a common seal which shall be kept in such manner as the Examinations Board directs;
- (c) may with the prior approval of the Minister, borrow, lend or otherwise raise money in such usual manner, including by way of executing securities and guarantees, as it may from time to time determine;
- (d) may acquire, hold, develop and dispose of property, whether movable or immovable, in the normal course of business;

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- (e) may acquire, hold and dispose of investments in other enterprises subject to approval by the Minister; and
 - (f) may sue and be sued in its corporate name.

(3) All courts, judges and other persons acting judicially shall take judicial notice of the seal of the Examinations Board affixed to a document and shall presume that it was duly affixed.

(4) The provisions of the Fourth Schedule shall have effect with respect to the Examinations Board.

Membership of
the Examinations
Board.

15. (1) The Examinations Board shall consist of eleven members appointed by the Minister, of whom—

- (a) one shall be nominated by the Minister for the time being responsible for finance;
- (b) one shall be nominated by the Minister for the time being responsible for technical and business training;
- (c) one shall be nominated by the Federation of Kenya Employers;
- (d) one shall be the Director of Personnel Management or a person nominated by him;
- (e) one shall be nominated by the Attorney - General;
- (f) two shall be nominated by the Council;
- (g) two shall be nominated by the Council of the Institute of Certified Public Secretaries of Kenya; and
- (h) two shall be nominated by the Board, being persons who have an interest in and have

made a significant contribution in the development of education in accountancy, secretarial and related areas.

(2) In nominating a person for appointment pursuant to subsection (1) (a), the Minister shall have regard to the need to appoint a person who has the responsibility of guiding and advising on the policy relating to accountancy and accountability in Government.

(3) In nominating a person for appointment under subsection (1) (b), the Minister concerned shall have regard to the need to appoint a person who has responsibility for overseeing and is in charge of technical and business training matters in the Government.

(4) The person nominated under subsection (1) (c) shall be a person engaged in industry or commerce.

Secretary to the
Examinations
Board.

16. (1) There shall be a Secretary to the Examinations Board who shall be appointed by the Minister on the recommendation of the Board.

(2) The Secretary to the Examinations Board shall hold and vacate the office of Secretary in accordance with the terms specified in the instrument of his appointment to that office.

(3) The Secretary to the Examinations Board may attend meetings of the Examinations Board and may, with the consent of the person presiding at a meeting, take part in the deliberations on any matter arising at the meeting, but shall not be entitled to vote on any such matter.

(4) In addition to the functions which he is required to exercise and perform under this Act, the Secretary to the Examinations Board shall exercise and perform such other functions as the Examinations Board may, from time to time, determine.

Functions of the
Examination
Board.

17. (1) The functions of the Examinations Board shall be to—

- (a) prepare syllabuses for professionals' and technicians' examinations in accountancy and company secretarial practice and related disciplines;
- (b) make rules with respect to such examinations;
- (c) arrange and conduct examinations and issue certificates to candidates who have satisfied examination requirements;
- (d) promote recognition of its examinations in foreign countries;
- (e) investigate and determine cases involving indiscipline by students registered with the Examinations Board;
- (f) promote and carry out research relating to its examinations;
- (g) promote the publication of books and other materials relevant to its examinations;
- (h) liaise with the Ministry of Education in accreditation of institutions offering training in subjects examinable by the Board, and
- (i) do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Examinations Board shall consult with the Council, and with the Council of the Institute of Certified Public Secretaries of Kenya and any other appropriate stakeholder, as often as it considers it necessary to do so

for the purpose of exercising and performing its functions.

(3) The Examinations Board may consult such other parties as it considers appropriate in facilitating the performance of its functions.

(4) The Examinations Board may establish such committees (including examinations committees) as it considers necessary for the purpose of exercising and performing its functions and, subject to subsections (5), (6) and (7), may determine the membership and procedure of any such committee.

(5) The majority of the members of any examinations committee established under subsection (4) for the purpose of conducting accountants' examinations shall be members of the Institute.

(6) The majority of the members of any examinations committee established under subsection (4) for the purpose of conducting secretaries' examinations shall be members of the Institute of Certified Public Secretaries of Kenya.

(7) The chairman of any committee established under subsection (4) shall be a member of the Examinations Board and shall be appointed by that Board.

PART III PRACTISING CERTIFICATES AND REGISTRATION OF ACCOUNTANTS

Requirement for
practising
certificate.

18. (1) No person shall practise as an accountant unless he is the holder of a practising certificate and a licence to practice that are in force.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding three years or to

both.

Practising as an accountant.

19. (1) Subject to this section, a person practises as an accountant for the purposes of this Act if, in consideration of remuneration or other benefits received or to be received, and whether by himself or in partnership with any other person, such person—

- (a) engages in the practice of accountancy or holds himself out to the public as a person entitled to do so;
- (b) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records;
- (c) offers to perform or performs services involving the verification or certification of financial accounts and related statements; or
- (d) engages in any practice, or performs or offers to perform any services, which may be prescribed.

(2) A salaried employee of the Government, a local authority or of any other person does not practise as an accountant by reason only of doing, in his capacity as such employee, any of the acts referred to in subsection (1).

(3) An advocate, a Certified Public Secretary or a person authorised to do so by or under any written law, does not practise as an accountant by reason only of carrying on the work of a tax consultant or a tax advisor.

Applying for a practising certificate.

20. (1) A person wishing to obtain a practising certificate shall apply to the Registration Committee.

(2) An application for a practising certificate shall be in the prescribed form and shall be accompanied by the

prescribed fee.

Issue of practising certificate.

21. (1) Where an application is made by a person in accordance with section 20, the Registration Committee shall issue to such person a practising certificate if it is satisfied that the person—

- (a) is registered;
- (b) has received, from an accountant who is the holder of a practising certificate, instruction of such nature and for such period as may be prescribed; and
- (c) meets such other requirements as may be prescribed,

and, if not so satisfied, shall refuse the application.

(2) A practising certificate issued under this Act remains in force unless it ceases to be in force under subsection (5), (6) or (7).

(3) Notwithstanding subsection (2), a practising certificate issued to any person shall cease to be in force if that person ceases to be registered.

(4) Where a practising certificate issued to any person ceases to be in force under subsection (5), that practising certificate shall not come into force again if the person is subsequently registered, but shall come into force again if the registration of the person is restored pursuant to subsection (5) or (6) of section 29.

(5) Subject to subsection (6), a practising certificate shall cease to be in force during any period when it is suspended pursuant to section 33 (1) (h) or, if that period is varied on appeal under section 34, during the period as so varied.

(6) A person may surrender to the Institute, a

practising certificate issued to him and, in that event, the certificate shall cease to be in force.

(7) Where a practising certificate ceases to be in force under subsection (3), the person to whom the certificate was issued shall deliver it to the Institute within fourteen days after the date on which he ceases to be registered.

(8) Any person who, without reasonable excuse, contravenes subsection (7) commits an offence and is liable on conviction to a fine not exceeding five thousand shillings.

Issue of annual licence.

22. (1) Where the holder of a practising certificate intends to practise as a firm, whether as a sole practitioner or in a partnership, he shall apply to the Registration Committee for an annual licence in the prescribed form, furnishing the Registration Committee with such details of the firm as it may require.

(2) Where an application is made by a person under subsection (1), the Registration Committee shall issue him with an annual licence if it is satisfied that the person—

- (a) holds a practising certificate; and
- (b) meets such other requirements as may be prescribed;

and, if not so satisfied, shall refuse the application.

(3) An annual licence issued under this Act shall be valid from the date of issue to the thirty-first December of the year of issue and shall be renewed at the end thereof.

Practising certificate, annual licence to remain the property of Institute.

23. A practising certificate or an annual licence issued to any person shall remain the property of the Institute.

Application for
registration.

24. (1) A person wishing to be registered as an accountant shall apply to the Registration Committee.

(2) An application to be registered as an accountant shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) Where an application is made by a person in accordance with this section, the Registration Committee shall approve the application if it is satisfied that the person—

- (a) is of or above the age fixed by the Council pursuant to subsection (4);
- (b) is qualified to be registered; and
- (c) is not disqualified from being registered,

and, if not satisfied, shall refuse the application.

(4) The Council shall by notice in the Gazette, fix the age which a person wishing to be registered must have attained.

(5) A person who, in an application to be registered, wilfully makes a false or misleading statement commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding eighteen months or to both.

Holders of
authority of
practise.

Cap. 531

25. (1) Notwithstanding sections 21 (1)(b) and 24 (3), the Registration Committee may on application and payment of the prescribed fees, register as an accountant any person who, prior to the commencement of this Act, is the holder of a valid authority to practise issued in accordance with the provisions of the Accountants Act (now repealed).

(2) Applications under this section shall be received by the Committee within a period of eighteen months

after the commencement of the Act.

Qualifications for registration.

26. (1) Subject to this section, a person is qualified to be registered if the person –

- (a) has been awarded by the Examinations Board a certificate designated the Final Accountancy Certificate; or
- (b) holds a qualification approved under subsection (2) by the Council.

(2) The Council may in consultation with the Examinations Board and with the approval of the Minister, from time to time, by notice in the Gazette, approve qualifications which it considers sufficient to allow a person to be registered, and may, in like manner, withdraw any such approval.

(3) Notwithstanding subsection (1) or (2), the Council may require a person making an application for registration to satisfy the Registration Committee, in such manner as it may direct, that the person has-

- (a) adequate knowledge of local law and practice;
- (b) adequate experience in accounting ; and
- (c) acceptable professional conduct and general character which, in the opinion of the Committee, make such person a fit and proper person to be registered, and unless the person so satisfies the Registration Committee, he shall not be treated as being qualified to be registered.

Disqualification from registration.

27. (1) Subject to this section, a person is disqualified from being registered -

- (a) if such person is convicted by a court of

competent jurisdiction in Kenya or elsewhere of an offence involving fraud or dishonesty;

- (b) if such person is an undischarged bankrupt;
- (c) if such person is of unsound mind and has been certified to be so by a medical practitioner; or
- (d) during any period when the Disciplinary Committee has determined under section 33 (1) (i) that such person shall not be registered, or during any such period as varied by the High Court under section 34 (2) of this Act.

(2) A person shall not be treated as disqualified under subsection (1) (a) of this section if the Registration Committee, having regard to—

- (a) the period which has elapsed since the conviction concerned; or
- (b) the circumstances of the offence,

determines that it would be unreasonable to so treat him.

(3) A person shall not be treated as disqualified under subsection (1) (b) of this section if the Registration Committee is satisfied that the bankruptcy of the person concerned arose as a result of unavoidable losses or misfortunes.

(4) A person shall not be treated as being disqualified under subsection (1) (d) of this section if the High Court allows an appeal under section 34 of this Act.

Register.

28. (1) The Secretary to the Registration Committee shall cause to be kept a register in which shall be recorded—

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- (a) the name of any person whose application under section 20 of this Act is approved;
 - (b) the fact that a practising certificate is issued to any person or that any such certificate has ceased to be in force under this Act;
 - (c) particulars of the cancellation of the registration of any person;
 - (d) the fact that the registration of any person is restored under this Act;
 - (e) details of firms engaged in the public practice of accountancy, including their proprietors; and,
 - (f) such other matters as the Council may determine.

(2) The Secretary to the Registration Committee may cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken—

- (a) without payment, by—
 - (i) any member of the police force or any public servant, acting in the course of his duty; or
 - (ii) any person authorized by the Secretary to the Council; or
- (b) on payment of such fee as may be prescribed, by any other person.

(4) The register shall be received in proceedings before any court or tribunal as evidence of the matters recorded therein which are required by or under this Act to be so recorded.

(5) A document purporting to be certified by the Secretary to the Council-

- (a) to be a true copy of an entry in the register;
- (b) stating that a person is not, or was not on a date specified in the document, registered; or
- (c) stating that a person is not, or was not on a date specified in the document, the holder of a practising certificate,

shall be received in proceedings before a court or tribunal as *prima facie* evidence of any such matters contained in the entry or of that fact, as the case may be.

(6) Proceedings on an inquiry under this Act before the Disciplinary Committee shall be deemed to be proceedings before a tribunal for the purposes of this section.

Cancellation of registration.

29. (1) Subject to this section, the Registration Committee shall cancel the registration of a member—

- (a) if determination that the registration of the member be cancelled is made under section 33(1)(i) of this Act;
- (b) if any circumstance arises which, if the member were then a person applying for registration, would disqualify him under section 27 from being registered; or
- (c) if it is appropriate under subsection (4) of this section to do so.

(2) The Registration Committee shall not cancel the registration of a member under subsection (1) (b) unless it has afforded to the member an opportunity to show cause why his registration should not be cancelled.

(3) Subsections (2) and (3) of section 27 shall apply in relation to the cancellation of the registration of a member of the Institute under subsection (1) (b) of this section as they apply for the purpose of determining whether or not a person is disqualified from being registered.

(4) The Registration Committee may cancel the registration of a member of the Institute who fails to comply with the requirements of section 5.

(5) When the registration of a member of the Institute is cancelled under subsection (1) (a), the Registration Committee shall restore the registration if, on an appeal made under section 34 the High Court allows the appeal.

(6) The Registration Committee shall upon request restore the registration of a person whose registration is cancelled under subsection (1) (c).

(7) The registration of a member shall be restored by recording in the register particulars of the restoration.

(8) The registration of a member shall be cancelled by recording in the register particulars of the cancellation.

(9) A person aggrieved by a determination of the Registration Committee under section 21(1), section 22(2) and section 24(3) may appeal to an arbitrator against such determination within twenty-one days of being notified of the determination.

(10) A person dissatisfied by a decision under subsection (9) may appeal to the High Court, which may affirm the determination of the Registration Committee or

allow the appeal.

PART IV DISCIPLINARY PROVISIONS

Professional
misconduct.

30. (1) A member of the Institute shall be guilty of professional misconduct if such member –

- (a) allows any person to practise in his name as an accountant, unless such person is the holder of a practising certificate and is in partnership with him or employed by him;
- (b) enters, for the purpose of or in the course of practising as an accountant, into partnership with a person who does not hold a practising certificate, or secures any professional business through the services of such a person or by means not open to an accountant;
- (c) pays or allows or agrees to pay, directly or indirectly, to any person (other than a person who holds a practising certificate, is a retired partner or the legal representative of such a partner), any share, commission or brokerage out of the fees for, or profits of his professional services;
- (d) accepts or agrees to accept any part of the fees of, or profits for, the professional work of an advocate, auctioneer, broker or other agent who is not the holder of a practising certificate;
- (e) solicits clients or professional work or advertises professional attainments or services by use of means which contravene the guidelines published by the Council;
- (f) discloses information acquired in the

course of professional engagement to any person other than a client, without the consent of the client, or otherwise than required by law;

- (g) certifies or submits in his name or in the name of his firm a report of an examination of financial statements, where the examination of such statements and the related records have not been made by him or a partner or an employee in his firm;
- (h) fails to observe and apply professional, technical, ethical or other standards prescribed by the Council as guidelines for practice by members of the Institute.
- (i) permits his name or the name of his firm to be used in connexion with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecasts;
- (j) expresses his opinion on financial statements of any business or any enterprise in which he, his immediate family, his firm or any partner in his firm, has an interest, unless he discloses that interest when expressing the opinion;
- (k) charges, in respect of any professional employment other than insolvency or receivership, fees which are based on a percentage of profits or which are contingent on results;
- (l) fails to disclose in a financial statement or otherwise a material fact known to him the disclosure of which is necessary to ensure that the financial statement is not

misleading;

- (m) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;
- (n) is guilty of gross negligence in the conduct of his professional duties;
- (o) expresses an opinion on any matter with which he is concerned in a professional capacity without obtaining sufficient information on which to base the opinion;
- (p) fails to keep the funds of a client in a separate banking account or to use any such funds for purposes for which they are intended;
- (q) includes in any statement, return or form to be submitted to the Council any particular knowing it to be false; or
- (r) is found to engage in any other fraudulent acts, or
- (s) fails to do any other act which may be prescribed.

(2) Subsection (1) (f) shall not apply in respect of information disclosed to the Institute in fulfilment of the requirements of a quality assurance programme provided for under section 13.

(3) For the purposes of subsection (1) (j), the term “immediate family” includes a spouse, child, grandchild, parent, grandparent, brother, sister, uncle, aunt, first cousin or adopted child and the child of his or her brother or sister or of his or her adopted child, and such relations of the half-blood, or such child of such relations

of the half-blood, as well as of the whole-blood.

Disciplinary
Committee.

31. (1) There shall be a committee of the Council to be known as the Disciplinary Committee.

(2) The Disciplinary Committee shall consist of seven members who shall be appointed in accordance with subsection (3).

(3) The members of the Disciplinary Committee shall be appointed by the Minister from amongst persons nominated in the following manner—

- (a) four nominated by the Council from amongst the members of the Institute, of whom one shall be designated as the chairman;
- (b) one nominated by the Council from another profession other than accountancy;
- (c) one nominated by the Attorney-General;
- (d) one nominated by an organization that promotes corporate governance.

(4) In making appointments under this section the Minister shall have regard to the knowledge and interest of the persons so appointed in matters pertaining to accountancy.

(5) The quorum of a meeting of the Disciplinary Committee shall be four.

(6) Subject to subsection (7), a member of the Disciplinary Committee shall hold office for three years and shall be eligible for reappointment for one further term.

(7) Where any member of the Disciplinary Committee resigns his office or is for any reason unable

to perform the functions of his office, the Council shall with the consent of the Minister, require the respective nominating body specified in subsection (3) to nominate a replacement for such member, for appointment in accordance with that subsection.

(8) The Council shall provide the Disciplinary Committee with such facilities and resources as are necessary to enable it competently discharge its functions.

(9) The Disciplinary Committee may, subject to the provisions of this Act, regulate its own procedure.

Inquiry by the
Disciplinary
Committee.

32. (1) Where the Council has reason to believe that a member of the Institute may have been guilty of professional misconduct it shall refer the matter to the Disciplinary Committee which shall inquire into the matter.

(2) The provisions of the Fifth Schedule shall have effect with respect to an inquiry by the Disciplinary Committee pursuant to subsection (1).

Recommendation
after inquiry.

33. (1) On the completion of an inquiry under section 32 into the alleged professional misconduct of a member of the Institute, the Disciplinary Committee shall submit to the Council a report of the inquiry which shall include one or more of the following recommendations, namely—

- (a) that no further action be taken against the member;
- (b) that the member be reprimanded;
- (c) that the member be reprimanded with publication of the reprimand in the Kenya Gazette or in any other suitable media which may include the newspapers, electronic media and the internet;

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- (d) that the member pays such costs to the Institute, not exceeding one hundred thousand shillings, as may be determined;
 - (e) that the member undertakes training at his own cost, of such nature and duration and at such institutions as may be determined;
 - (f) that the member pays to the Institute a fine not exceeding fifty thousand shillings;
 - (g) that the member discharges his professional obligations under any contractual arrangement subject of the alleged misconduct;
 - (h) that any practising certificate held by the member be suspended, or
 - (i) that the registration of the member be cancelled and that he be not registered for such period (including life) as may be specified.

(2) Where the Disciplinary Committee, in a report makes a recommendation under subsection (1), the Council shall inform the member concerned of the action to be taken against him and effect the recommendation of the Disciplinary Committee.

(3) A member aggrieved by a determination of the Disciplinary Committee under subsection (1) may make an appeal to the Council within sixty days of the communication to him of such determination, providing the grounds upon which the appeal is lodged.

(4) The Council may upon receipt of an appeal under subsection (3) direct the Disciplinary Committee to re-open the inquiry and shall in such direction specify the aspects of the matter it requires the Disciplinary Committee to reconsider.

(5) The Disciplinary Committee shall comply with the direction of the Council under subsection (4) and shall, after concluding the inquiry, submit a report to the Council in accordance with subsection (1).

(6) Any recommendation of the Disciplinary Committee under this section shall not be effected until after the expiry of the period prescribed under subsection (3) for appeals and the subsequent conclusion of the appeal proceedings thereof.

Appeals.

34. (1) A person aggrieved by a determination of the Disciplinary Committee under section 33(2) may appeal to the High Court against such determination within sixty days of being notified of the determination.

(2) On an appeal the High Court may affirm, with or without variation, of the period for which the person concerned is not to be registered, or the period for which his practising certificate is suspended, confirm the determination of the Disciplinary Committee or allow the appeal.

(3) A determination under section 33 of this Act shall have effect notwithstanding that an appeal is made against the determination, but in the event that the High Court allows the appeal—

- (a) section 28 of this Act shall have effect in relation to the cancellation of the registration of the member; and
- (b) the suspension of the practising certificate of the member of the Institute shall cease to have effect.

Rules.

35. (1) The Chief Justice may make rules governing appeals under section 34 and providing for the fees to be paid, the scale of costs of any appeal and the procedure to be followed therein.

Cap. 21. (2) Until rules are made under subsection (1) of this section, and subject to any such rules, the provisions of the Civil Procedure Code shall apply as if the determination appealed against was a decree of a subordinate court exercising original jurisdiction.

Part to apply to previous holder of an authority to practise.

36. For the avoidance of doubt it is declared that the provisions of this Part shall apply to any person registered as an accountant under the provisions of section 25 of this Act for actions undertaken by such person while practising under a written authority to practise granted prior to the commencement of this Act.

PART V MISCELLANEOUS

Staff of the Institute and the Examinations Board.

37. (1) The Institute and the Examinations Board may each engage and employ such persons as are necessary for the discharge of their respective functions under this Act, on such terms and conditions as may be specified in the instruments of appointment.

(2) The terms and conditions of employment of staff employed under this section shall be as may be determined by the Institute and the Examinations Board respectively.

(3) For the purposes of subsection (2) "terms and conditions" includes conditions with respect to the duration of employment or with respect to dismissal from employment.

Protection from liability.

38. No liability shall attach to the Institute, or the Examinations Board or to any of their respective members, employees or agents for any loss or damage sustained by any person as a result of any act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed or conferred by or under this Act.

Moneys payable to the Institute and the Examinations Board.

39. (1) There shall be payable to the Institute and the Examinations Board such moneys as are appropriated by Parliament, and such grants as may be recommended by the Minister and approved by Parliament for their respective purposes.

(2) The Minister may give directions as to the amounts in which, and the times at which, moneys referred to in subsection (1), are to be paid to the Institute or the Examinations Board.

Accounts and audit.

40. (1) The Institute and the Examinations Board shall keep proper accounts and records in relation to the accounts and shall each prepare in respect of each accounting year a statement of accounts.

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(2) The statement of accounts of the Institute and the Examinations Board shall, subject to the overriding provisions of the Public Audit Act, 2003, and *mutatis mutandis*, be audited by accountants appointed by the Institute and the Examinations Board, as the case may be.

(3) Within six months after the end of the financial year or other period to which the accounts examined and audited under subsection (2) relate, the Institute and the Examinations Board shall send to the Minister a copy of the statement together with a copy of any report made by the auditor concerned on that statement or on any such accounts.

Offences.

41. (1) A person who—

- (a) assumes or uses the title or designatory letters referred to in section 4 (2)(a) and who is not a Fellow of the Institute of Certified Public Accountants of Kenya; or
- (b) assumes or uses the title or designatory letters referred to in section 4 (2) (b) and

who is not a member of the Institute of Certified Public Accountants of Kenya;

- (c) assumes or uses the title “Honorary Fellow of the Institute of Certified Public Accountants of Kenya” and who is not such Honorary Fellow; or
- (d) otherwise falsely assumes or uses any title or designatory letters prescribed by the Minister,

commits an offence.

(2) A corporate body (whether incorporated in Kenya or elsewhere) which falsely uses any of the titles or designatory letters referred to in section 4 (2) (a) or (b) commits an offence.

(3) Where a firm uses the title or designatory letters referred to in section 4(2) while each of the partners in the firm are entitled to use the title or designatory letters, each of the partners of the firm commits an offence.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding fifty thousand shillings, and, in the case of a continuing offence, a further fine not exceeding four thousand shillings for each day on which the offence continues.

Examinations
offences.

42. Any person who—

- (a) gains access to examinations materials and knowingly reveals the contents, whether orally, in writing or through any other form, to an unauthorised party, whether a candidate or not;
- (b) wilfully and maliciously damages examinations materials;

- (c) while not registered to take a particular examination, with intent to impersonate presents or attempts to present himself to take the part of an enrolled candidate;
- (d) presents a forged certificate to a prospective employer or to an institution of learning with intent to gain employment or admission; or
- (e) introduces unauthorized materials into the examinations room, whether in writing or in any other form, whether a candidate or not,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, or to a fine not exceeding one hundred thousand shillings, or to both.

Conduct of
prosecutions.
Cap. 75.

43. The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for purposes of this Act.

Vacancy in
membership.

44. The Council and the Examinations Board may exercise and perform their functions notwithstanding any vacancy among the members and the validity of any proceedings of the Council or the Examinations Board shall not be affected by any such vacancy or any defect in the appointment of a member.

Appointment of
interim managers.

45. (1) Where a member in private practice suffers incapacitation, the Council may appoint a person, in this section referred to as an interim manager, to conduct the professional affairs of that member for a duration not exceeding two years in accordance with the provisions of the Sixth Schedule.

(2) The interim manager appointed under subsection (1) shall be the holder of a practising certificate issued in accordance with the provisions of this Act.

(3) The provisions of the Sixth Schedule shall have effect with respect to an interim manager appointed under this section.

Regulations.

46. The Minister may make regulations prescribing anything which is required to be prescribed under the provisions of this Act.

References to accountant.

47. Where, in any written law, any reference is made (in whatsoever terms), or is implied as referring to an accountant, such reference or implied reference shall be deemed, subject to the provisions of the Public Audit Act, 2003, and *mutatis mutandis*, refer to the holder of a practising certificate, or to the holders of practising certificates, issued pursuant to section 21 of the Act.

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PART VI REPEALS AND AMENDMENTS

Amendment of Cap. 486.

48. Section 161 of the Companies Act is amended by repealing subsection (1) and substituting therefor the following new subsection—

(1) A person or firm shall not be qualified for appointment as auditor of a company unless he or, in the case of a firm, every partner in the firm, is the holder of a practising certificate issued pursuant to section 21 of the Accountants Act, 2008.

Amendment of Cap. 489.

49. (1) The Building Societies Act is amended by repealing section 15 and replacing it with the following new section—

Audit.

15. Every building society shall have one or more auditors, each of whom shall be the holder of a practising certificate issued pursuant to section 21 of the Accountants Act, 2008.

Amendment of
No. 14 of 2007.

50. The Labour Relations Act, 2007, is amended in section 42 by repealing subsection (5) and substituting therefor the following new subsection—

(5) The account rendered under this section shall be verified by statutory declaration, and shall be audited by the holder of a practising certificate issued pursuant to section 21 of the Accountants Act, 2008.

Repeal of Cap.
531 and savings.

51. (1) The Accountants Act is repealed.

(2) Notwithstanding the repeal of the Accountants Act, the transitional provisions set out in the Seventh Schedule shall have effect on the repeal of the Accountants Act.

FIRST SCHEDULE

(s.3 (4))

THE INSTITUTE

CHAIRMAN OF THE INSTITUTE

1. (1) At each annual general meeting of the Institute a person shall be elected to the office of Chairman.

(2) Unless he earlier vacates the office, a person elected to the office of chairman shall hold the office until another chairman is elected.

(3) A person who holds the office of chairman is eligible for re-election.

(4) A person who holds the office of Chairman may resign the office by writing under his hand delivered to the Council.

2. (1) On the advice of the Council, the Minister may

appoint a person to act as chairman—

- (a) during a vacancy in the office of Chairman;
or
- (b) during any period when the Chairman is for any reason unable to exercise and perform, the function of his office.

(2) The Minister may at any time, on the advice of the Council, revoke the appointment of a person to act as Chairman.

(3) The appointment of a person to act as Chairman ceases to have effect—

- (a) if made during a vacancy in the office of Chairman, when the vacancy ends by the election of a Chairman;
- (b) if the person appointed resigns the office by writing under his hand delivered to the Minister; or
- (c) if the Minister revokes the appointment under subparagraph (2) of this paragraph.

MEETINGS OF THE INSTITUTE

3. Subject to paragraph 4 of this Schedule, an annual general meeting of the Institute shall be held not later than six months after the end of each year.

4. A special general meeting of the Institute—

- (a) may be held at any time; and
- (b) be held on a written request made to the Council and signed by not less than one hundred members of the Institute.

5. (1) A meeting of the Institute shall be convened by the Council by giving to every member of the Institute a written notice—

- (a) stating the place and time of the meeting; and
- (b) indicating the business which it is proposed to transact at the meeting, which shall include, among other matters, the presentation of the following—
 - (i) a report by the Council covering the past year;
 - (ii) financial statements and the auditor's report thereon;
 - (iii) election of the Chairman and Council members; and
 - (iv) the appointment of the auditor.

(2) Notice of a meeting shall be given not less than fourteen days before the date on which it is to be held to each member of the Institute by posting the notice to the address of the member last known to the Institute, or by handing the notice to the member in person.

(3) The validity of any proceedings of the Institute shall not be affected by any failure to comply with the requirement of subparagraph (2) of this paragraph unless it is proved that the failure to comply in relation to any member was a deliberate failure.

6. (1) The Chairman shall preside at all meetings of the Institute at which he is present.

(2) At a meeting of the Institute at which the Chairman is not present, the Vice-Chairman shall preside.

(3) At a meeting of the Institute at which neither the Chairman nor the Vice-Chairman are present, the members of the Institute present shall elect one of their members to preside.

7. (1) Subject to this paragraph, the quorum at a meeting of the Institute shall be one hundred members.

(2) Where a general meeting of the Institute is convened—

- (a) otherwise than pursuant to paragraph 4 (b) of this Schedule, and a quorum is not present when the meeting proceeds to business, the meeting shall stand adjourned until the same day on the following week, at the same time and place, and if a quorum is not present at or within fifteen minutes after that time, the members present shall constitute a quorum; or
- (b) pursuant to paragraph 4 (b) of this Schedule, and a quorum is not present when the meeting proceeds to business the meeting shall be dissolved.

8. (1) No business shall be transacted at a meeting of the Institute unless—

- (a) the business is indicated in the notice of the meeting as business which it is proposed to transact; or
- (b) in the case of business not so indicated, the meeting decides to transact the business and the person presiding at the meeting agrees to the transaction of the business.

(2) Minutes of the proceedings at meetings of the Institute shall be kept in such a manner as the Chairman or in his absence the person presiding at a particular meeting,

directs.

9. The person presiding at a meeting of the Institute may adjourn the meeting from time to time and from place to place, with the consent of the meeting.

10. The person presiding at a meeting of the Institute may in his discretion limit the number of persons permitted to speak in favour of or against any motion and the time any such person may so speak.

11. (1) Questions arising at a meeting shall be determined by a majority of the members of the Institute voting on the question.

(2) Voting on any question shall be by a show of hands or such other procedure as may be prescribed in by-laws or regulations published under the provisions of this Act.

(3) Where a ballot is held, voting may be either done personally or by written proxy.

(4) An instrument appointing a proxy shall be in writing and shall be deposited with the Secretary to the Council not less than forty-eight hours before the meeting of the Institute at which it is to be used.

(5) A proxy to be used in any ballot at any meeting may be used at the meeting or, if the meeting is adjourned, in any ballot when the meeting is resumed after the adjournment but the holding of a proxy shall not be counted towards the quorum at any stage of any meeting.

(6) The person presiding at a meeting of the Institute has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

(7) A declaration by the person presiding at a meeting of the Institute that a resolution has or has not been carried and an entry to that effect in the minutes of the meeting is

evidence of that fact.

SECOND SCHEDULE (s.10(2), s.11)

THE COUNCIL

MEMBERS OF THE COUNCIL

1. (1) Each of the six members of the Council (one of whom shall be the Vice-Chairman) referred to in section 11(f) of this Act shall be elected at an annual general meeting of the Institute.

(2) Subject to paragraph 2 of this Schedule, a member of the Council—

- (a) elected pursuant to subparagraph (1);
- (b) appointed pursuant to section 11(b), (c), (d) and (e) of this Act; or
- (c) co-opted pursuant to subparagraph (4),

shall hold office for the prescribed period, unless he earlier ceases to hold office.

(3) A member of the Institute shall be disqualified from contesting any position on the Council if within the preceding three years, such member—

- (a) has been found guilty of an act of professional misconduct under section 31 of the Act, which in the opinion of the Council renders him unfit to hold the office;
- (b) has been convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;

- (c) has been convicted of an offence involving corruption, dishonesty or abuse of office; or
- (d) has been adjudged bankrupt or has entered into a composition or scheme of arrangement with his creditors.

(4) Subject to subparagraph (5), where a member of the Council (including a member co-opted pursuant to this subparagraph) ceases to hold office before the expiration of the prescribed period or otherwise than under the provisions of paragraph 2 of this Schedule (where applicable), the Council may co-opt a person to hold that office.

(5) Subparagraph (4) does not apply to the members of the Council appointed pursuant to section 11(b), (c), (d) and (e) of this Act.

(6) In this subparagraph, the "prescribed period" means—

- (a) in relation to a member referred to in subparagraph (2) (a), the period beginning with his election and ending at the commencement of the day on which the third annual general meeting after his election is to be held;
- (b) in relation to a member referred to in subparagraph (2) (b), the period of three years next following his appointment; or
- (c) in relation to a member referred to in subparagraph (2) (c), the period beginning with his being co-opted and ending at the commencement of the day on which the first annual general meeting after his being co-opted is to be held.

2. Of the six members of the Council (including the Vice-Chairman) first elected by the Institute after the commencement of this Act—

- (a) two (identified by agreement of the members of the Council or by lot) shall cease to hold office at the commencement of the day on which the second annual general meeting of the Institute is to be held, save in the case of any such who earlier ceases to hold office;
- (b) two (so identified) shall cease to hold office at the commencement of the day on which the third annual general meeting of the Institute is to be held, save in the case of any such member who earlier ceases to hold office; and
- (c) the remaining two members shall cease to hold office at the commencement of the day on which the fourth annual general meeting of the Institute is to be held, save in the case of any such member who earlier ceases to hold office.

3. Notwithstanding paragraph 2, the office of a member of the Council shall become vacant if such member—

- (a) resigns the office by writing under his hand delivered—
 - (i) in the case of the members appointed pursuant to section 11(b), (c), (d) and (e) to the Minister; or
 - (ii) in the case of any other member, to the Council;
- (b) has the appointment revoked by the Minister

in the case of the members appointed pursuant to section 11(b), (c),(d) and (e);

- (c) ceases to hold the office in the case of the members appointed pursuant to section 11(b), (c),(d) and (e);
- (d) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors; or,
- (e) is absent without the permission of the Council from three or more consecutive ordinary meetings of the Council; or,
- (f) is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine; or,
- (g) is found guilty of an act of professional misconduct under section 31 of the Act, which in the opinion of the Council renders him unsuitable to continue to hold office; or,
- (h) becomes for any reason, including infirmity of body or mind, incompetent or incapable of performing the functions of his office.

4. (1) Subject to paragraph 1(4) of this Schedule, where a member of the Council ceases to hold office, another member shall be elected to fill the vacancy at the annual general meeting of the Institute next following, or shall be appointed as provided under section 11(b), (c), (d) or (e) of this Act, as the case may be.

(2) A member of the Council who ceases to hold office other than under paragraph 3 (b), (c), (d), (e) or (f) is eligible for re-election or re-appointment.

VICE CHAIRMAN OF THE COUNCIL

5. (1) There shall be a Vice-Chairman of the Council who shall be elected by the Council from amongst the members of the Council elected under section 11(f) of this Act.

(2) The Vice-Chairman shall hold office for the period of one year immediately following his election to the office or, if he ceases to hold office as a member of the Council before then, until he so ceases to hold office.

(3) Subject to paragraph 2 of the First Schedule of this Act, the Vice-Chairman may exercise and perform the functions of the Chairman if the Chairman is unable to exercise and perform those functions.

PROCEEDINGS

6. The quorum at meetings of the Council and the arrangements relating to meetings of the Council shall be such as the Council may determine.

7. The person presiding at a meeting of the Council has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

8. Minutes of the proceedings of the Council shall be kept in such manner as the Council directs, and, on the written request of the Minister, shall be made available to him or any person nominated by him.

THIRD SCHEDULE

(s. 13(9))

**THE REGISTRATION AND QUALITY
ASSURANCE COMMITTEE**

1. (1) A member of the Registration Committee shall hold office for a period of three years unless he earlier ceases to hold office.

(2) A member of the Registration Committee may resign the office by writing under his hand to the Council which shall seek the nomination of a replacement for appointment by the Minister.

(3) A member of the Registration Committee who ceases to hold office at the end of the prescribed term is eligible for re-appointment.

2. (1) The procedure to be followed on a quality assurance review shall subject to this Schedule, be at the discretion of the Registration Committee.

(2) The Registration Committee shall notify the member of an impending quality assurance review at least twenty one days prior to commencement of the review.

3. (1) Where the results of a quality assurance review are considered unsatisfactory the Registration Committee may require the member or members concerned to undertake necessary corrective actions to comply with professional standards and may prescribe requirements to be observed in this respect.

(2) The requirements of the Registration Committee shall be implemented by the member or members investigated within such time as may be determined.

4. The Registration Committee shall provide the Council with a report on all the quality assurance reviews the Committee undertakes and where necessary or appropriate, the Council shall take such action as may be

recommended therein.

5. (1) The Registration Committee shall not without the consent of the member or members under review, disclose to any person other than the Council, any information received in the course of an investigation, unless such disclosure is required by a law for the time being in force in Kenya.

(2)A

FOURTH SCHEDULE (s.14 (4))**THE EXAMINATIONS BOARD****MEMBERS OF THE EXAMINATIONS BOARD**

1. (1) A member of the Examinations Board shall hold office for the period of three years next following his appointment and shall be eligible for reappointment, unless he earlier ceases to hold office.

(2) The office of a member of the Examinations Board shall become vacant if such member—

- (a) resigns the office by writing under his hand delivered to the Minister;
- (b) has the appointment revoked by the Minister or ceases to hold the office.

(3) The Minister shall after receipt of the communication under subparagraph (2), appoint a replacement in accordance with section 15 (1) of the Act.

2. (1) The Minister shall appoint from amongst the members of the Examinations Board a Chairman and Vice Chairman of the Board.

(2) The Chairman and the Vice-Chairman of the Examinations Board shall hold office until they cease to hold office as members of the Examinations Board or until they resign the office under subparagraph (3) of this paragraph.

(3) The Chairman or the Vice-Chairman of the Examinations Board may resign the office, by writing under his hand addressed to the Minister.

(4) The Vice-Chairman may exercise any of the functions of the Chairman if the Chairman is unable to exercise and perform those functions.

3. (1) The quorum at meetings of the Examinations Board and the arrangements relating to meetings shall be such as the Examinations Board may determine.

(2) The person presiding at a meeting of the Examinations Board has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

(3) Minutes of the proceedings of the Examinations Board shall be kept in such manner as the Board directs, and, on the written request of the Minister shall be made available to him or any person nominated by him.

FIFTH SCHEDULE (s. 32(2))

DISCIPLINARY COMMITTEE

PROCEEDINGS ON INQUIRY

1. (1) The Council shall cause a statement to be prepared setting out the allegation of professional misconduct to be investigated by the Disciplinary Committee.

(2) The Secretary to the Council shall transmit to each member of the Disciplinary Committee and to the person whose conduct is the subject of investigation a copy of the statement prepared pursuant to subparagraph (1) of this paragraph.

2. (1) The Secretary to the Council shall give notice of the first date, time and place fixed for the inquiry to the person whose conduct is the subject of investigation.

(2) Every such notice shall, at least fourteen days, before the first date fixed for the inquiry, be delivered to the person whose conduct is the subject of investigation by hand or be sent to him through the post by registered letter addressed to his address last known to the Council.

(3) Where a person whose conduct is the subject of investigation fails to appear either personally or by his advocate at the time and place fixed in the notice served on him, the inquiry may proceed in his absence.

(4) Notice of the adjournment of an inquiry shall be given to the person whose conduct is the subject of investigation in such manner as the Disciplinary Committee determines.

3. (1) A person whose conduct is the subject of investigation may appear at the inquiry either personally or by his advocate.

(2) The Institute may appear at the inquiry by an advocate.

4. (1) For the purpose of the conduct of the inquiry the Disciplinary Committee has power—

- (a) to administer oaths;
- (b) to summon persons to attend and give evidence;
- (c) to order the production of relevant documents, including court judgements; and
- (d) to recover in whole or in part the costs of the inquiry not exceeding one hundred thousand shillings from any or all the parties involved in the proceedings.

(2) An oath may be administered by any member of the Disciplinary Committee or by the Secretary to the

Council.

(3) Notices, orders and summonses of the Disciplinary Committee shall be issued under the hand of the Secretary to the Council.

5. (1) Subject to this Schedule on the inquiry–

- (a) the procedure to be followed is within the discretion of the Disciplinary Committee; and
- (b) the Disciplinary Committee is not bound by the rules of evidence.

(2) Unless the Disciplinary Committee otherwise determines, the proceedings on the inquiry shall be held in camera.

(3) The Secretary to the Council shall keep or cause to be kept, a record of the proceedings on the inquiry.

(4) The Secretary to the Council may attend meetings of the Disciplinary Committee and may with the consent of the person presiding at a meeting take part in the deliberations on any matter arising at the meeting but he shall not be entitled to vote on any such matter.

6. (1) The decision of the Disciplinary Committee on the inquiry is that of the majority of the members present and voting for the purpose of making a decision.

(2) For the purposes of making the decision on the inquiry every member of the Disciplinary Committee has one vote, and, in the event of an equality of votes, the Chairman of the Disciplinary Committee also has a casting vote.

7. The validity of proceedings of the inquiry is not affected by any vacancy among the members of the Disciplinary Committee or any defect in the appointment

of a member.

8. (1) A person served with a summons to appear as a witness at the inquiry who, without reasonable excuse fails to attend as required by the summons, is guilty of an offence.

(2) A person appearing as a witness at the inquiry who, without reasonable excuse—

- (a) refuses or fails to be sworn;
- (b) refuses or fails to answer a question that he is required to answer by the Chairman of the Disciplinary Committee; or
- (c) refuses or fails to produce a document that he was required to produce by a summons under this Act, served on him,

commits an offence.

(3) A person convicted of an offence under this subparagraph is liable on conviction to a fine not exceeding twenty thousand shillings.

9. (1) A member of the Disciplinary Committee has, in the performance of his duty as a member, the same protection and immunity as a judge.

(2) A person appearing before the Disciplinary Committee at the inquiry on behalf of the person whose conduct is the subject of investigation has the same protection and immunity as an advocate has in appearing for a party in proceedings in the High Court.

(3) A person summoned to attend or appearing before the Disciplinary Committee as a witness at the inquiry has the same protection, and is, in addition to the penalties provided in this Schedule, subject to the same liabilities, in any civil or criminal proceedings, as a

witness in proceedings in the High Court.

Cap. 63 **10.** Proceedings on the inquiry shall be deemed to be judicial proceedings for the purposes of Chapter XI of the Penal Code.

SIXTH SCHEDULE (s.45 (3))

APPOINTMENT OF INTERIM MANAGER

1. A member in practice shall be deemed to be incapacitated when an event occurs that makes it impossible for the member to continue running the practice in accordance with the provisions of this Act or a circumstance arises which makes it not possible for the member to continue discharging the duties expected of him as a professional accountant.

2. Every member who holds a practising certificate shall at such intervals as the Council may direct nominate a suitably qualified member in good standing to be known as the interim manager, to manage and control the affairs of his practice in the event of incapacity or inability of the member to run the affairs of the practice.

3. Where a member in practice fails to nominate an interim manager as required under this Schedule, the Council may exercise its powers as conferred in section 45 of the Act.

4. (1) For the purpose of nominating the interim manager, a member in practice or the Council as the case may be shall specify in the instrument of nomination:

- (a) the general nature of obligations to be assumed by the interim manager, and specifically the role of the interim manager in the disposal of the practice and his relationship with any person who may be appointed as estate executor or administrator;

- (b) the powers of the interim manager covering matters such as staff deployment or other operations of the practice;
- (c) the remuneration of the interim manager;
- (d) the period of service of the interim manager;
- (e) the powers conferred on the interim manager to sign reports, correspondence, agreements or other documentation in the name of the practice;
- (f) the premises from which the operations will continue to take place if different from the practice's registered office.

(1) An interim manager shall take appropriate steps to safeguard the welfare of clients of the practice at the time of assuming office and should desist from conduct that seeks to gain from his appointment, otherwise than in the form of remuneration agreed.

(2) An interim manager shall be responsible for their own actions. The interim manager shall exercise due care and skill in the discharge of his duties and shall provide adequate professional indemnity insurance during the term of his engagement and meet other conditions as may be prescribed.

(3) Where appropriate, the interim manager may have his name included in the letter head of the practice but may not alter the name of the practice unless this is expressly provided for in the nomination agreement.

(4) Where the nominating member has at the time of nominating an interim manager authorised the sale of his practice, the interim manager shall enter into negotiations with interested parties and shall ensure that the

instructions of the nominating member are executed to his best interest.

(5) Full details of every agreement involving the appointment of an interim manager shall be submitted to the Council within twenty one days of its commencement. An interim manager shall within seven days of assuming office notify the Council of that fact.

(6) Where the Council appoints an interim manager, full details of the appointment shall be recorded by the Council and the acceptance thereof documented.

(7) The interim manager shall at intervals of six months, submit a report to the person that appointed him. Where the appointing member is incapacitated or deceased, the interim manager shall submit such report to the Council. The report shall contain all such details as may be prescribed by the Council and any other matters covered within the nomination agreement.

SEVENTH SCHEDULE

(s.52)

TRANSITIONAL PROVISIONS

Cap. 531

1. The Institute and the Examinations Board established under the Accountants Act, (now repealed) having effect before the commencement of this Act, shall be deemed to continue operations and continue their existence as the Institute or the Examinations Board as the case may be, under the provisions of this Act.

2. The Chairman, Vice-Chairman and Members of the Council of the Institute who are in office immediately before the commencement of this Act shall be deemed to have been elected within the meaning of section 11 of this Act and the validity of the proceedings of the Council shall not be affected by any irregularities in the appointment of the members of the Council.

3. The Secretary to the Council who is in office immediately before the commencement of this Act shall be deemed to have been appointed within the meaning of section 12 of this Act.

4. The Chairman, Vice-Chairman and members of the Examinations Board who are in office immediately before the commencement of this Act shall be deemed to have been appointed within the meaning of section 15 of this Act and the validity of the proceedings of the Examinations Board shall not be affected by any irregularities in the appointment of the members of the Examinations Board.

5. The Secretary to the Examinations Board who is in office immediately before the commencement of this Act shall be deemed to have been appointed within the meaning of section 16 of this Act.

6. Any registration certificate or practising certificate or written authority to practise issued and in force under the Accountants Act (now repealed) shall at the commencement of this Act be deemed, as the case may be, to have been issued in accordance with the provisions of this Act:

Provided that the holder of a written authority to practise shall apply to the Registration Committee for registration within a period of eighteen months after the commencement of this Act.

7. Any certificate of qualification issued by the Examinations Board at the commencement of this Act shall be deemed to have been issued under the provisions of this Act.

8. The Disciplinary Committee established under the Accountants Act (now repealed) shall be deemed to have been established within the provisions of this Act, and any proceedings or matters pending before the Disciplinary Committee at the commencement of this Act shall proceed

without risk as to their validity in accordance with the provisions of this Act notwithstanding any irregularities in the appointment of the members of the Disciplinary Committee.

9. All persons who prior to the commencement of this Act were in the employment of the Registration of Accountants Board, shall upon commencement be deemed to be employed by the Institute on such terms and conditions not being to their disadvantage, as the Institute may determine.

10. The service of the employees of the Institute and the Examinations Board shall be deemed to be continuous service for the purposes of the payment of all employment benefits.

11. Any thing done by the Institute or the Examinations Board established under the Accountants Act, (now repealed) having effect before the commencement of this Act, shall be deemed to have been done by the Institute or the Examinations Board as the case may be, under the provisions of this Act.