

**THE CERTIFIED PUBLIC SECRETARIES OF KENYA
ACT, 1988**

No. 12 of 1988

Date of Assent: 14th December, 1988

Date of Commencement: By Notice

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An Act of Parliament to make provision for the establishment of an Institute to be known as the Institute of Certified Public Secretaries of Kenya and a Registration Board to be known as the Registration of Certified Public Secretaries Board and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the Certified Public Secretaries of Kenya Act, 1988, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint. Short title and commencement.
2. (1) In this Act, unless the context otherwise requires— Interpretation.
- “Institute” means the Institute of Certified Public Secretaries of Kenya established by section 3;
- “certified public secretary” means a person registered as a certified public secretary under section 19;
- “company secretary” means a certified public secretary;
- “chairman of the Institute” means the chairman of the Institute and includes a person appointed under paragraph 2 of the First Schedule to act as chairman;
- “Council” means the Council of the Institute established by section 8;
- “Disciplinary Committee” means the committee established under section 25;
- “Registration Board” means the Registration of Certified Public Secretaries Board established by section 11;
- “chairman of the Board” means the chairman of the Registration of Certified Public Secretaries Board appointed by the Minister under the Third Schedule;
- “practising certificate” means a practising certificate issued by the Registration Board pursuant to section 14;
- “register” means the register kept pursuant to section 22;

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“Examination Board” means the Kenya Accountants and Secretaries National Examinations Board established by section 14 of the Accountants Act.

- (2) For the purposes of this Act—
- (a) a person is registered if his name is recorded in the register pursuant to section 22 (1) (a);
 - (b) a person is not registered if his registration is cancelled and particulars of the cancellation are recorded in the register pursuant to section 22 (1) (c);
 - (c) a person is registered if the fact of the restoration of his registration is recorded in the register pursuant to section 22 (1) (d).

PART II—ESTABLISHMENT OF VARIOUS BODIES

A—Institute of Certified Public Secretaries of Kenya

Establishment
of the institute.

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

- (2) The Institute—
- (a) shall be a body corporate;
 - (b) shall have a common seal which shall be kept in such manner as the Council directs;
 - (c) may acquire, hold and dispose of property; and
 - (d) 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 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 are divided into the following two classes, namely—

- (a) Fellows (comprising those persons who become fellows pursuant to an invitation under subsection (3) of this section and section 5) each of whom shall be titled

“Fellow of the Institute of Certified Public Secretaries of Kenya” (designatory letter F.C.P.S. (Kenya)); and

(b) Members (comprising those members of the Institute who are not Fellows) each of whom shall be titled “Member of the Institute of Certified Public Secretaries of Kenya” (designatory letters C.P.S. (Kenya).

(3) Where the Council considers that a member of the Institute has rendered outstanding service to the secretarial profession, the Council may invite the member to become a Fellow.

(4) Members of the Institute shall pay such fees and subscriptions as the Council may determine under section 8 (3).

5. (1) Where the Council considers that a person (not being a member of the Institute) has rendered special services to the Institute or the secretarial profession, the Council may invite the person to become an Honorary Fellow of the Institute.

Honorary
Fellows.

(2) An Honorary Fellow shall not be a member of the Institute.

6. There shall be a chairman of the Institute who shall be elected in the manner provided in paragraph 1 of the First Schedule.

Chairman
of the
Institute.

7. The functions of the Institute shall be—

- (a) to promote standards of professional competence and practice amongst members of the Institute;
- (b) to promote research into the subject of secretarial practices and finance and related matters and the publication of books, periodicals, journals and articles in connection therewith;
- (c) to promote the international recognition of the Institute;
- (d) to advise the Examination Board on matters relating to examination standards and policies;
- (e) to carry out any other functions prescribed for it under any of the provisions of this Act or under any other written law; and

Functions
of the
Institute.

(f) to do anything incidental or conducive to the performance of the preceding functions.

B—Council of the Institute

The Council.

8. (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 fees and subscriptions payable from time to time by members of the Institute shall be determined by the Council.

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

Constitution
of the
Council.

9. (1) The Council shall consist of—

(a) the chairman;

(b) nine members of the Institute elected in the manner provided in paragraph (1) of the Second Schedule; and

(c) one member appointed pursuant to subsection (2).

(2) The Minister may appoint one member of the Council.

Secretary to
the Council.

10. (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 the secretary in accordance with the terms of the instrument of his 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 functions as the Council may, from time to time, determine.

C—Registration of Certified Public Secretaries Board

The
Registration
Board.

11. (1) There shall be a board to be known as the Registration of Certified Public Secretaries Board.

(2) The Registration Board—

(a) shall be a body corporate;

(b) shall have a common seal which shall be kept in such manner as the Registration Board directs;

(c) may acquire, hold and dispose of property; and

(d) 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 Registration Board affixed to a document and shall presume that it was duly affixed.

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

12. (1) The Registration Board shall consist of eight members appointed by the Minister, of whom—

Constitution of
the Registration
Board.

(a) four shall be nominated by the Council;

(b) one shall be nominated by the Examination Board;

(c) one shall be nominated by the Minister for the time being responsible for commerce;

(d) one shall be the secretary to the Commission for Higher Education or a person nominated by him;

(e) one shall be the Director of Personnel Management or a person nominated by him.

(2) The members of the Registration Board appointed pursuant to subsection (1) (a) and (b) shall be nominated from amongst the members of the Institute.

13. (1) The Minister shall appoint a public officer to be the registrar of the Registration Board.

Registrar of
the Registration
Board.

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

(3) The registrar of the Registration Board may attend meetings of the Registration 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 he shall not be entitled to vote on any such matter.

(4) In addition to the functions which he is required to exercise and perform by or under this Act, the registrar of the

Registration Board shall exercise and perform such functions as the Registration Board may, from time to time, determine.

PART III—PRACTISING CERTIFICATES AND REGISTRATION
OF CERTIFIED PUBLIC SECRETARIES

Practising
certificate.

14. (1) After the expiration of twelve months or such longer period as the Minister may declare by notice in the Gazette after the commencement of this Act, no person shall practise as a certified public secretary unless he is the holder of a practising certificate that is in force.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding six thousand shillings or to imprisonment for a period not exceeding one year or to both.

Practising as
a certified public
secretary.

15. (1) Subject to this section, a person practises as a certified public secretary for the purpose 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—

- (a) he engages in the public practice of secretaryship or performs the statutory duties of a certified public secretary or holds himself out to the public as a person entitled to do so;
- (b) he offers to perform or performs services involving the submission of official and statutory returns of companies and trading organizations;
- (c) he offers to perform or performs services involving the certification of statutory returns or records related to statements; or
- (d) he 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 a certified public secretary by reason only of doing, in his capacity as such employee, any of the acts referred to in subsection (1).

Application
for practising
certificate.

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

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

17. (1) Where an application is made by a person in accordance with section 16, the Registration Board shall issue to him a practising certificate if it is satisfied that—

Issue of
practising
certificate.

(a) he is registered;

(b) he has received from a secretary who is the holder of a practising certificate instructions of such a nature and for such period as may be prescribed; and

(c) he meets such other requirements as may be prescribed and, if not so satisfied, shall refuse the application.

(2) A practising certificate issued to any person remains the property of the Registration Board.

18. (1) A practising certificate remains in force unless it ceases to be in force under subsections (2), (4) or (5).

Duration of
practising
certificate.

(2) A practising certificate issued to any person ceases to be in force if that person ceases to be registered.

(3) Where a practising certificate issued to any person ceases under subsection (2) to be in force, that practising certificate does not come into force again if the person is subsequently registered:

Provided that a practising certificate will come into force if the registration of the person is restored pursuant to subsection (5) or (6) of section 23.

(4) Subject to section 29 (3) (b), a practising certificate ceases to be in force during any period when it is suspended pursuant to section 28 (1) (e) or, if that period is varied on appeal under section 29, during the period as so varied.

(5) A person may surrender to the Registration Board a practising certificate issued to him and in that event the certificate ceases to be in force.

(6) Where a practising certificate ceases to be in force under subsection (2), the person to whom the certificate was issued shall deliver it to the Registration Board within fourteen days after the date on which he ceases to be registered.

(7) Any person who, without reasonable excuse, contravenes subsection (6) is guilty of an offence and liable to a fine not exceeding five thousand shillings.

Application
for
registration.

19. (1) A person wishing to be registered as a secretary, shall apply to the Registration Board.

(2) An application to be registered as secretary 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 Board shall approve the application if it is satisfied that—

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

(4) The Registration Board shall fix, by notice in the Gazette, the age at 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 shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a period not exceeding six months or to both.

Qualification.

20. (1) Subject to this section, a person is qualified to be registered if—

- (a) he has been awarded by the Examinations Board a certificate designated the Final Certificate of the Certified Public Secretaries Examination;
- (b) he holds a qualification approved under subsection (2) by the Registration Board;
- (c) he is, at the commencement of this Act, both a citizen of Kenya and a member of the professional body known as the Institute of Chartered Secretaries and Administrators;
- (d) he is, at the commencement of this Act, both ordinarily resident in Kenya and a member of the professional body known as the Institute of Chartered Secretaries and Administrators;
- (e) he is, at the commencement of this Act, registered as an accountant under section 24 (1) of the Accountant Act; or
- (f) he is qualified as an advocate of the High Court of Kenya.

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(2) The Registration Board may, from 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 Registration Board may require a person making application for registration to satisfy the Registration Board (in such manner as it directs) that his knowledge of local law and practice is, and that his professional conduct and general character have been such as in the opinion of the Registration Board make him a fit and proper person to be registered, and unless the person so satisfies the Registration Board he shall not be treated as being qualified to be registered.

21. (1) Subject to this section, a person is disqualified from being registered— Disqualifications.

(a) if he is convicted by a court of competent jurisdiction in Kenya or elsewhere of an offence involving fraud or dishonesty;

(b) if he is an undischarged bankrupt;

(c) if he is of unsound mind and has been certified to be so by a medical practitioner; or

(d) if during any period when the Registration Board has determined under section 28 (1) (d) that he shall not be registered or during any such period as varied by the High Court under section 29.

(2) A person shall not be treated as disqualified under subsection (1) if the Registration Board, 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) if the Registration Board 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) if the High Court allows an appeal under section 29.

Registration.

22. (1) The registrar of the Registration Board shall cause to be kept a register in which shall be recorded—

- (a) the name of any person whose application under section 19 is approved;
- (b) the fact that a practising certificate is issued to any person or that any such certificate ceases to be in force under this Act;
- (c) particulars of the cancellation under this Act of the registration of any person;
- (d) the fact that the registration of any person is restored under this Act; and
- (e) such other matters as the Registration Board may determine.

(2) The registrar of the Registration Board 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 officer acting in the course of his duty; or
- (ii) any person authorized by the registrar of the Registration Board; 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 registrar of the Registration Board—

- (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 matter contained in the entry or of that fact, as the case may be.

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

23. (1) Subject to this section, the Registration Board shall cancel the registration of a member of the Institute, if—

Cancellation of registration.

- (a) a determination that the registration of the member be cancelled is made under section 28 (1);
- (b) any circumstances arise which, if the member were other than a person applying for registration, would disqualify him under section 21 from being registered; or
- (c) the Registration Board is required under subsection (4) to do so.

(2) The Registration Board shall not cancel the registration of a member of the Institute 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 21 shall apply in relation to the cancellation of the registration of a member of the Institute under subsection (1) (b) as they apply for the purpose of determining whether or not a person is disqualified from being registered.

(4) The Council may require the Registration Board to cancel the registration of a member of the Institute who fails to comply with the requirement of section 4 (4).

(5) When the registration of a member of the Institute is cancelled under subsection (1) (a) the Registration Board shall restore the registration if, on an appeal made under section 29, the High Court allows the appeal.

(6) The Council may direct the Registration Board to restore the registration of a person whose registration is cancelled under subsection (1) (c) and, if it does so, the Registration Board shall restore the registration.

(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.

PART IV—DISCIPLINARY PROVISIONS

Professional
misconduct.

24. (1) The Minister may, on the advice of the Council and the Registration Board, regulate the professional conduct of the members of the Institute.

(2) A member of the Institute is guilty of professional misconduct if—

- (a) he allows any person to practise in his name as a certified public secretary unless such person is the holder of a practising certificate and is in partnership with him or employed by him;
- (b) he enters, for the purpose of or in course of practising as a certified public secretary, 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 a certified public secretary;
- (c) he pays or allows or agrees to pay or allow 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) he 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;
- (e) he certifies or submits in his name or in the name of his firm a report of statutory returns and completion of such statutory returns and the related records have not been made by him or a partner or an employee in his firm;
- (f) he fails to disclose in a statutory return or otherwise a material fact known to him and disclosure of that fact is necessary to ensure that the statutory returns are not misleading;

- (g) he fails to report a material mis-statement known to him to appear in a statutory return with which he is concerned in a professional capacity;
- (h) he is guilty of gross negligence in the conduct of his professional duties;
- (i) he 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;
- (j) he 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;
- (k) he includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false; or
- (l) he does or fails to do any other act which may be prescribed.

25. (1) There shall be a committee to be known as the Disciplinary Committee.

The
Disciplinary
Committee.

(2) The Disciplinary Committee shall consist of not less than three or more than five members who shall be appointed by the Council and the quorum of any meeting of such committee shall be three.

(3) There shall be a chairman of the Disciplinary Committee who shall be appointed by the Council.

(4) Subject to this section, a member of the Disciplinary Committee holds office for three years and is eligible for reappointment.

(5) The Council may, at any time, with or without cause, terminate the appointment of a member of the Disciplinary Committee or terminate the appointment of a member as chairman of the committee.

(6) Where a member of the Disciplinary Committee is unable to exercise and perform his functions the Council may appoint a person to replace the member for such period as may be necessary.

26. (1) Where the Council has reason to believe that a member of the Institute may have been guilty of professional

Inquiry by
the Disciplinary
Committee.

misconduct it shall refer the matter to the Disciplinary Committee which shall inquire into the matter.

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

Recommen-
dations
after inquiry.

27. (1) On the completion of an inquiry under section 26 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 than one, 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 Gazette;
- (d) that the registration of the member be cancelled and that he be not registered for such a period (including life) as is specified; or
- (e) that any practising certificate held by the member be suspended.

(2) Where the Disciplinary Committee in a report makes a recommendation under subsection (1) (a) or (b) the Council shall, if it agrees with the recommendation, inform the member of the Institute concerned that no further action is to be taken against him or reprimand the member, as the case may be.

(3) Where the Disciplinary Committee in a report makes a recommendation—

- (a) under subsection (1) (a) or (b) and the Council does not agree with the recommendation; or
- (b) under subsection (1) (c), (d) or (e),

the Council shall, within fourteen days of the receipt of the report, forward to the Registration Board a copy of the report together with any recommendation referred to in subsection (1) which the Council considers appropriate in the circumstances of the case, which recommendation may or may not be the same as the recommendation of the Disciplinary Committee.

28. (1) On the receipt pursuant to section 27 of a copy of a report relating to the alleged professional misconduct of a member of the Institute, the Registration Board may make one, or more than one, of the following determinations, namely—

Determination
by the
Registration
Board.

- (a) determine that no further action be taken against the member;
- (b) reprimand the member;
- (c) reprimand the member and cause the fact of the reprimand to be published in the Gazette;
- (d) determine that the registration of the member be cancelled and direct that he be not registered for such period (including life) as is specified; or
- (e) suspend the practising certificate of the member for such period as is specified.

(2) Before making a determination under subsection (1) the Registration Board may, in writing, require the Council to furnish to the Registration Board such further evidence concerning any matter that is so specified, and the Council shall comply with the requirement.

(3) In order to comply with a requirement of the Registration Board under subsection (2) the Council may direct the Disciplinary Committee to reopen and continue the inquiry concerned and the Disciplinary Committee shall do so to the extent that it is necessary to furnish the evidence required.

(4) A member of the Institute whose alleged professional misconduct is the subject of inquiry has a right to be heard by the Registration Board before it makes a determination under subsection (1).

(5) The Registration Board shall notify the member of the Institute whose alleged professional misconduct is the subject of inquiry of its determination under subsection (1).

(6) Subject to section 29, a determination of the Registration Board under subsection (1) is final.

29. (1) A person aggrieved by a determination of the Registration Board under section 28 (1) (d) or (e) may appeal to the High Court against the determination within ninety days of being notified of the determination.

Appeal.

(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) the determination of the Registration Board or allow the appeal.

(3) A determination under section 28 (1) (d) or (e) has effect notwithstanding that an appeal is made against the determination, but in the event that the High Court allows the appeal—

(a) section 23 (5) has effect in relation to the cancellation of the registration of the member of the Institute; and

(b) the suspension of a practising certificate of the member of the Institute ceases to have effect.

Rules.

30. (1) The Chief Justice may make rules governing appeals under section 29 and providing for the fees to be paid the scale of costs of any appeal and the procedures to be followed therein.

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

PART V—MISCELLANEOUS PROVISIONS

Staff and protection of Institute, etc. from liability.

31. (1) The Institute and the Registration Board may each employ such persons as are necessary for the discharge of their respective functions.

(2) No liability shall attach to the Institute, or the Registration 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 or conferred by or under this Act.

Terms and conditions of employment of staff.

32. The terms and conditions of employment of persons employed under section 31 shall be as are determined by the Institute and the Registration Board respectively.

Moneys payable to the Institute and the Registration Board.

33. (1) There shall be payable to the Institute and the Registration Board such moneys as are appropriated 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, and the Registration Board respectively.

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

Accounts
and audit.

(2) The accounts and statements of accounts of the Institute and the Registration Board shall, subject to the Exchequer and Audit Act, be audited by accountants appointed by the Institute or by the Registration Board, as the case may be.

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(3) As soon as the accounts and statement of accounts of the Institute or the Registration Board have been audited under subsection (2), the Institute and the Registration Board, as the case may be, 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.

(4) On the written request of the Minister the accounts and statement of the Institute, or the Registration Board, shall be made available to him or to any person nominated by him.

35. (1) A person who—

Offences.

(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 Secretaries of Kenya;

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

(c) assumes or uses the title Honorary Fellow of the Institute of Certified Public Secretaries of Kenya and who is not such an Honorary Fellow,

shall be guilty of an offence.

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

(3) Where a firm—

(a) uses the title or designatory letters referred to in section 4 (2) (a) and each of the partners is the firm is not entitled to use the title or designatory letters as the case may be; or

(b) uses the title or designatory letters referred to in section 4 (2) (b) and each of the partners in the firm is not entitled to use the title or designatory letters as the case may be,

each of the partners of the firm shall be guilty of an offence.

(4) A person guilty of an offence under this section is liable on conviction to a fine not exceeding five thousand shillings, together with a further fine not exceeding four hundred shillings for each day on which the offence continues.

Vacancy in membership.

36. The Council or the Registration Board may exercise and perform its functions notwithstanding any vacancy among the members and the validity of any proceedings of the Council or the Registration Board is not affected by any such vacancy or any defect in the appointment of a member.

Regulations.

37. The Minister may make regulations prescribing anything which is required to be or which maybe prescribed under this Act, and for carrying out or giving effect to this Act.

PART VI—GENERAL PROVISIONS

Application of Part.

38. The provisions of this Part shall have effect notwithstanding any other provisions of this Act.

Convening first annual general meeting of the Institute.

39. (1) To enable the first annual general meeting of the Institute to be convened the Minister may appoint a person to exercise and perform the functions of the Council under paragraph 5 of the First Schedule, and anything done by the person so appointed under that paragraph for that purpose shall be deemed to have been done by the Council.

(2) The Minister shall not appoint under section 9 (2) a member of the Council until after the chairman has been elected at the first annual general meeting of the Institute.

(3) The person appointed pursuant to subsection (1) shall, until the chairman is elected preside at the first annual meeting of the Institute and may, for that purpose, exercise and perform all the functions under this Act of the chairman.

40. In order to provide for continuity in the statutory administrative affairs of companies, the Minister shall make rules to provide for the orderly and smooth transfer of functions to qualified certified public secretaries duly registered in accordance with the provisions of this Act.

Transitional provisions.

41. The Companies Act is amended by inserting the following new section immediately after section 178—

Amendment of Cap. 486.

Qualifications of a secretary to a company. 178A. (1) Every secretary to the company shall hold a qualification prescribed by section 20 of Certified Public Secretaries Act, 1988.

No. ... of 1988.

(2) Notwithstanding the provisions of subsection (1) the Minister may, on the advice of the Council and the Registration Board, exempt certain classes of companies, non-profit making organizations and charitable organizations from the provisions of that subsection.

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 holds 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 the 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 functions 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).

MEETINGS OF THE INSTITUTE

3. (1) Subject to subparagraph (2), an annual general meeting of the Institute shall be held not later than six months after the end of each year.

(2) The first annual general meeting of the Institute shall be held on such date as is convenient.

4. A special general meeting of the Institute—

- (a) may be held at any time; and
- (b) shall be held on a written request made to the Council and signed by not less than twenty 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 where, and the day and hour when, the meeting is to be held; and
- (b) indicating the business which it is proposed to transact at the meeting.

(2) Notice of a meeting shall be given not less than forty 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 members 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) unless it is proved that the failure so 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 of the Council shall preside.

(3) At a meeting of the Institute at which neither the chairman nor the vice-chairman of the Council is present, the members of the Institute present at the meeting shall elect one of their members to preside.

7. (1) Subject to this paragraph, the quorum at a meeting of the Institute is twenty members.

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

(a) otherwise than pursuant to paragraph 4 (b), 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), 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 the meetings of the Institute shall be kept in such 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 unless, before the declaration of the results of the voting on a show of hands, a ballot is demanded—

(a) by the person presiding, at the meeting; or

(b) by at least two members of the Institute present, in which event the question shall be determined by a ballot taken in such manner as the person presiding at the meeting directs.

(3) Where a ballot is held voting may be done either 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. 8 (4))

THE COUNCIL—MEMBERS OF THE COUNCIL

1. (1) Each of the nine members of the Council (one of whom shall be the vice-chairman) referred to in section 9 (1) (b) shall be elected at an annual general meeting of the Institute.

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

(a) elected pursuant to subparagraph (1);

(b) appointed pursuant to section 9 (2); or

(c) co-opted pursuant to subparagraph (3),

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

(3) Subject to subparagraph (4), 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 (where applicable) the Council may co-opt a person to hold that office.

(4) Subparagraph (3) does not apply to the member of the Council appointed pursuant to section 9 (2).

(5) In this paragraph 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) (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 nine members of the Council (including the vice-chairman) first elected by the Institute after the commencement of this Act—

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

3. A member of the Council may resign the office by writing under his hand delivered—

- (a) in the case of the member appointed pursuant to section 9 (2), to the Minister; or
- (b) in the case of any other member, to the Council.

4. (1) Subject to paragraph 1 (3), where a member of the Council ceases to hold office a member shall be elected to fill the vacancy at the annual general meeting of the Institute next following, or shall be appointed by the Minister, as the case may be.

(2) A member of the Council who ceases to hold office is eligible for re-election or re-appointment.

5. Paragraphs 1, 2, 3 and 4 do not apply to the chairman.

VICE-CHAIRMAN OF THE COUNCIL

6. (1) There shall be a vice-chairman of the Council who shall be elected by the Council from amongst the members of the Council.

(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, the vice-chairman may exercise and perform the function of the chairman if the chairman is unable to exercise and perform those functions.

PROCEEDINGS

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

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

9. 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. 11 (4))

THE REGISTRATION BOARD—MEMBERS OF THE REGISTRATION BOARD

1. (1) A member of the Registration Board shall hold office for the period of one year next following his appointment unless he earlier ceases to hold office.

(2) A member of the Registration Board may resign the office by writing under his hand delivered to the Minister.

(3) A member of the Registration Board who ceases to hold office is eligible for re-appointment.

CHAIRMAN AND VICE-CHAIRMAN OF THE REGISTRATION BOARD

2. (1) The Minister shall appoint from amongst the members of the Registration Board a chairman and a vice-chairman of the Board.

(2) The chairman and the vice-chairman of the Board shall hold his office until he ceases to hold office as a member of the Registration Board or until he resigns the office under sub-paragraph (3).

(3) The chairman or the vice-chairman of the Registration 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.

PROCEEDINGS

3. The quorum at meetings of the Registration Board and the arrangements relating to meetings shall be such as the Registration Board may determine.

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

5. Minutes of the proceedings of the Registration 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.

FOURTH SCHEDULE

(s. 26 (2))

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).

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; and

(c) to order the production of relevant documents, including court judgements.

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

(3) Notices, orders and summons 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.

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 on 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 summons under this Act, served on him,

is guilty of an offence.

(3) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding five 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 by this Schedule, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the High Court.

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