

ACCOUNTANTS ACT, 2010
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- SCHEDULE

An Act to regulate and provide for the development of the accounting profession; to continue the establishment of the Botswana Institute of Accountants under the new name of the Botswana Institute of Chartered Accountants; to provide for the registration of the accounting and auditing profession; and for matters incidental thereto.

Date of Assent: 3rd September, 2010

Date of Commencement: 1 April 2011

ENACTED by the Parliament of Botswana.

PART I – Preliminary

1. This Act may be cited as the Accountants Act, 2010 and shall come into operation on such date as the Minister may, by Order, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —

Interpretation

“accountant” means a person that performs or holds himself out to perform professional accounting services for a salary or fee;

“annual report” means the document that an entity issues on an annual basis of its affairs, including its financial statements together with the audit report thereon, and the report from its Board of Directors;

“audit” means an examination of the financial statements of an organisation to form an opinion on whether the —

(a) information presented in the financial statements, taken as a whole, reflect the true and fair financial position of the organisation including its assets and liabilities at a given date and its profits and losses for the given period; and

(b) the financial statements are prepared in accordance with the applicable financial reporting standards;

“auditor” means a certified auditor, whether independently or as a partner of an audit firm or an employee of the Government that provides audit services to a private or public entity;

“audit firm” means a firm that provides audit services to a private or public entity;

“auditing standards” means the auditing standards issued under the Financial Reporting Act;

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“Authority” means the Botswana Accounting Oversight Authority established under the Financial Reporting Act;

“Botswana Professional Accountancy Qualification” means the professional accountancy qualification established by the Institute under section 6, a holder of which shall have successfully completed the professional accountancy qualification examination conducted or arranged for conduct by the Institute;

“branch of accountancy profession” —

- (a) means an assemblage of the accountancy profession distinguishable by the nature of its professional activities and specialisation and accredited by the Authority as a branch of the accountancy profession under the Financial Reporting Act; and
- (b) includes any of the following assemblages of the accountancy profession as may be accredited by the Authority to be a branch of the accountancy profession —
 - (i) audit and assurance services,
 - (ii) management accounting,
 - (iii) public sector accounting,
 - (iv) internal audit, and
 - (v) any other assemblage of the accountancy profession as the Council may by resolution determine;

“certified auditor” means the professional accountant registered as an auditor in accordance with section 31;

“Code of Conduct and Ethics” means the Code of Professional Conduct and Ethics for professional Accountants referred to in section 6 (1) (d);

“entity” means any person or body of persons, whether incorporated or unincorporated;

“IFAC” means the International Federation of Accountants or its successor body;

“immediate family”, for the purposes of this Act, means a spouse, minor children, father and mother;

“independence” means independence of mind, independence in appearance, or both;

“independence of appearance” means the avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, will reasonably conclude that the integrity, objectivity or professional scepticism of a firm or a member of the audit team had been compromised;

“independence of mind” means the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism;

“Institute” means the professional accountancy body known as the Botswana Institute of Chartered Accountants established under section 3;

“material irregularity” means an irregularity that, by itself, or in combination with other irregularities, results in a misstatement of the financial statements of an entity, or in its financial statements not fairly presenting the operations and financial condition of the entity and that, if properly presented would affect a financial or investment decision of the user;

“member” means a person registered as a Member of the Institute in accordance with section 28, and includes a professional accountant or certified auditor registered under section 30 and 31;

“member firm” means a firm providing professional accounting services and is registered in accordance with section 33;

“President” means the person elected to be the President of the Institute under section 15;

“professional accountant” means a person who is registered as an accountant in accordance with section 30;

“professional accounting services” means services provided by a professional accountant —

(a) requiring accountancy or related skills; and

(b) relating to auditing, taxation, management consulting and financial management; and

“repealed Act” means the Accountants Act repealed under section 58.

PART II – *Establishment and functions of the Botswana Institute of Chartered Accountants*

3. (1) The Institute known as the Botswana Institute of Accountants, established under the repealed Act is hereby continued under the new name of the Botswana Institute of Chartered Accountants.

Continuation
of
establishment
of Institute

(2) The Institute shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

(3) All rights, obligations, assets and liabilities which have accrued to the Institute in terms of the repealed Act shall, upon this Act coming into force, simultaneously pass and accrue to the Institute and be dealt with in terms of this Act.

4. (1) The seal of the Institute shall be such device as may be determined by the Institute and shall be kept by the Chief Executive.

Seal of
Institute

(2) The affixing of the seal shall be authenticated by the President or Vice President and the Chief Executive or any other person authorised in that behalf by a resolution of the Council.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the Council by the President or any other person generally or specifically authorised by the Council in that behalf.

5. The principal objectives of the Institute shall be to —

Objectives of
Institute

(a) establish the Botswana Professional Accountancy Qualification;

(b) provide registration of accountants in all branches of the accountancy profession accredited by the Authority under the Financial Reporting Act;

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(c) promote high quality accounting, auditing and financial reporting standards and practices, in line with internationally accepted standards;

(d) promote the development of the accounting profession;

(e) supervise the accountancy profession in the public interest;

(f) promote the highest standards of professional ethics and business conduct of, and enhance the quality of services offered by professional accountants;

- (g) protect the public by ensuring the highest standards of professional accounting services;
- (h) ensure the professional independence of accountants;
- (i) determine the eligibility criteria to become a member of the Institute;
- (j) arrange for the assessment of candidates seeking certification as members;
- (k) promote, maintain and increase the knowledge, skills and competence of members of the Institute and students;
- (l) ensure that members obtain the necessary technical and ethical guidance that enables them to meet the needs of the community in areas in which they have special knowledge and expertise;
- (m) maintain and monitor high quality practical training at all levels of the profession;
- (n) seek public recognition of a broad range of skilled services that professional accountants and accounting technicians can provide;
- (o) promote and protect the objectives and sustainability of the Institute and of the accounting profession;
- (p) maintain the legitimate professional rights of its members;
- (q) advance the theory and practice of accountancy in all aspects;
- (r) develop and maintain effective working relationships with Government and with other national, regional and international accountancy bodies;
- (s) contribute to the international developments of accounting and auditing standards;
- (t) keep abreast of and disseminate to its members international developments affecting the accounting profession; and
- (u) protect the interests of its members.

General
functions and
powers of
Institute

6. (1) Subject to the provisions of this Act, the Institute shall carry out the following functions —

- (a) establish, develop and implement the Botswana Professional Accountancy Qualification in accordance with such requirements and conditions as the Institute shall determine under its rules, with the approval of the Minister;
- (b) establish branches of the accountancy profession accredited by the Authority under the Financial Reporting Act;
- (c) provide registration of accountants in all branches of the accountancy profession established, including —
 - (i) audit and assurance services,
 - (ii) management accounting,
 - (iii) public sector accounting,
 - (iv) internal audit, and
 - (v) any other branch as the Council may determine;

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- (d) establish, publish and review a Code of Professional Conduct and Ethics for Professional Accountants, which shall be consistent with and contain all the principles on the subject issued by the International Federation of Accountants, or its successors;
- (e) keep and maintain —
 - (i) a Register of Professional Accountants,
 - (ii) a Register of Certified Auditors,
 - (iii) a Register of Member Firms, and
 - (iv) such other registers as the Institute may deem necessary for the purposes of this Act;
- (f) lay down the requirements for different classes of its membership;
- (g) consider any application for registration made under this Act for different classes of its membership;
- (h) register as members of the Institute persons who qualify to be professional accountants, certified auditors, member firms or such other class of membership as the Institute may establish in its rules;
- (i) conduct or arrange for the conduct of such examinations as it deems necessary, including a Botswana Professional Qualification Examination, with focus on an adequate level of practical training, for the purposes of registering professional accountants;
- (j) determine practical training requirements for the purpose of granting full membership;
- (k) conduct, or arrange for the conduct of training programmes for members of the profession;
- (l) oversee, monitor and supervise the qualifications, and selection of mentors of practical training programmes;
- (m) inquire into any professional misconduct of any member, either on its own initiative or at the request of any person for violations or breaches of its codes, rules and standards in accordance with the rules and regulations of the Institute;
- (n) issue all notices required to be issued under this Act;
- (o) implement a sound system of quality assurance mechanisms to ensure high quality audit practice;
- (p) establish procedures for coordination of disciplinary responsibilities;
- (q) issue certificates of registration and practising certificates to members;
- (r) recognise any accountancy qualifications that are, in the opinion of the Council, equivalent to those of the Institute;
- (s) establish requirements for, and monitoring, of Continuous Professional Education programmes;
- (t) represent members' interests in local, regional and international forums;
- (u) develop a strategic plan that will lead to the long term financial sustainability of the organisation as an independent professional body for accountants and auditors;
- (v) conduct or arrange for the conduct of practice review of the auditors of entities, other than that of public interest entities;

- (w) provide comments on draft standards and other pronouncements of the International Federation of Accountants and International Accounting Standards Board; and make other feasible contributions to the standard setting activities of these international organisations; and
 - (x) perform such other duties or functions as it deems necessary to promote the objectives of the Institute.
- (2) In the performance of its functions and powers, the Institute shall take into account the interests of its members as well as that of the public.

Part III – Administration of the Institute

Council of
Institute

7. (1) The functions and powers of the Institute shall be exercised and performed by a Council consisting of nine members who shall be resident in Botswana.

(2) Without prejudice to the generality of subsection (1), the Council shall consist of the following members —

- (a) three persons appointed by the Minister, who shall not be the Auditor General or the Accountant General; and
- (b) six persons registered under this Act, who shall be elected by members of the Institute at the annual general meeting of the Institute.

(3) The Chief Executive appointed under section 26 shall be the Secretary to the Council.

(4) The members of the Council shall elect a President, Vice President and Treasurer, in accordance with section 15.

(5) The Minister shall cause the appointment of the members of the Council to be published by notice in the *Gazette*.

Institute to elect
members of
Council

8. The Institute shall, within one month of expiry of the tenure of office of a member of the Council, elect a member to the Council in accordance with section 7 (2) (b).

Powers of
Council

9. (1) The Council shall carry out such activities as will enable it to discharge the functions and objectives of the Institute.

(2) Subject to the provisions of this Act, and notwithstanding the generality of subsection (1), the Council shall have power to —

- (a) enter into such contracts or transactions as may be necessary or expedient for the purpose of discharging its functions;
- (b) cooperate with or become a member of, or an affiliate of any international body, the functions or objects of which are similar to or connected with those of the Institute;
- (c) establish and administer such systems or schemes as the Institute may consider necessary or expedient for the discharge of its functions;
- (d) engage in any activity, either alone or in conjunction with any other organisation or agency, whether local or international, that is connected with or conducive to the discharge of its functions;
- (e) issue or adopt codes, guidelines and standards relating to financial reporting, accounting and auditing;

- (f) impose such fees and charges as may be reasonable for services or facilities provided by the Institute;
- (g) borrow such sums of money or raise such loans as it may require for the purpose of discharging its functions; and
- (h) do such other acts as are incidental or necessary to any of its functions and powers conferred upon the Institute under this Act.

10. (1) An appointed member of the Council shall be appointed for a term of three years.

Tenure of office

(2) An elected member of the Council shall be elected for a term of two years.

(3) A member of the Council whose term of office expires shall be eligible for re-appointment or re-election for not more than four terms.

11. (1) The Minister shall appoint a member of the Council where the Institute fails, neglects or refuses to elect a member —

Minister's power to appoint members required to be elected

- (a) within 21 days of notification by the Minister to elect a member, in accordance with section 7 (2) (b); or
- (b) within the period referred to in section 13 (1) to fill a vacancy in terms thereof.

(2) A member of the Council appointed under —

- (a) subsection (1) (a) shall hold office for such period, not exceeding two years, as the Minister may determine; and
- (b) subsection (1) (b) shall hold office in accordance with section 13, and shall be deemed to have been duly elected by the Institute.

12. (1) A person shall not be appointed or elected as a member of the Council or be qualified to continue to hold office as a member who has —

Disqualification, removal and resignation

- (a) in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been discharged, or
 - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
- (b) within a period of 10 years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

(2) The Council may, by notice in writing, remove a member of the Council from office where the member —

- (a) is absent without reasonable cause from three consecutive meetings of the Council of which he or she has had notice;
- (b) is inefficient;
- (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and his or her medical doctor has issued a certificate to that effect;

- (d) contravenes a provision of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Institute and the Council; or
 - (e) has failed to comply with the provisions of section 21.
- (3) A member of the Council may resign from office by giving 30 days notice in writing to the President.
- (4) The office of a member of the Council shall become vacant —
 - (a) immediately after a ruling against the member is made on all appeals made in respect of charges levelled against him or her under subsection (1) (b);
 - (b) after a period of 30 days has elapsed from the date the member has given notice in writing to the President under subsection (3), of his or her intention to resign;
 - (c) after a period of 30 days has elapsed from the date the member is given notice in writing by the President to vacate office; or
 - (d) when the member is dismissed by the Council on the grounds of contravening a provision of this Act or for misconduct under subsection (2) (d).
 - (5) For purposes of subsection (2) (d), “misconduct” includes any act done without reasonable excuse by a member of the Council which —
 - (a) amounts to failure to perform in a proper manner any duty imposed on him or her as a member;
 - (b) is prejudicial to the efficient conduct of the Council; or
 - (c) tends to bring the Council into disrepute.

Filling of vacancies

13. (1) The Institute shall, on being notified by the Council in writing of a death or vacation of office of an elected member of the Council, elect, within such period as may be specified in the notice, being not less than 60 days from the date of the notification, a member to fill the vacancy, and the member so elected shall hold office for the remainder of the period for which the former member would, but for his or her death or the vacation of his or her office, have continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member of the Council whose office has been vacated would otherwise have held office is less than six months.

Co-opted member

- 14.** (1) The Council may co-opt any registered member to fill a vacancy —
 - (a) arising from the absence of a member who has been granted leave of absence by the Council; or
 - (b) where the Institute is not called upon to fill a vacancy in accordance with section 13 (1).

(2) The provisions of sections 11 (2), 12 and 13 shall, with the necessary modifications, apply in respect of a member co-opted under subsection (1).

President and Vice President of Institute, and Treasurer

15. (1) At the first meeting of the Council, the members shall elect from among their number, the President and the Vice President of the Institute, and a Treasurer.

(2) The President, Vice President and Treasurer shall hold office for a period of one year from the date of their election, and shall be eligible for re-election for one further term.

(3) On the expiry of the term of office of the President, Vice President and Treasurer, or where the President, Vice President or Treasurer vacates his or her office as such, a new President, Vice President or Treasurer shall be elected by the members from among their number at the next meeting of the Council or as soon thereafter as may be convenient.

(4) The President, Vice President or Treasurer may vacate his or her office as such even though he or she remains a member of the Council.

(5) The Vice President shall, whenever the President is absent or unable to carry out his or her functions, exercise the functions of the President during his or her absence.

16. (1) The President shall from time to time submit, to the Minister, reports with regard to matters relating to the activities of the Institute which, in the opinion of the Council, should be brought to the notice of the Minister.

Reports to
Minister

(2) The Council shall, when so requested by the Minister, furnish him or her with advice on matters in connection with the accounting profession or cognate matters and shall communicate, to the Minister, information acquired by it in the course of its duties on matters regarded by it as being of public importance.

17. A member shall be paid, out of the funds of the Institute, such remuneration and allowance, if any, as the Council may from time to time determine.

Remuneration
and allowance

PART IV – *Meetings and Proceedings of the Council*

18. (1) Subject to the provisions of this Act, the Council shall regulate its own proceedings.

Meetings of
Council

(2) The Council shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Council shall meet at least four times in a year for the transaction of business.

(3) Upon giving notice in writing of not less than 14 days, a meeting of the Council may be called by the President and shall be called if not less than one half of the members so request in writing.

(4) Where the urgency of any particular matter does not permit the giving of notice in accordance with subsection (3), a special meeting may be called upon giving a shorter notice.

(5) The quorum at any meeting of the Council shall be one half of the members.

(6) There shall preside, at any meeting of the Council —

(a) the President;

(b) in the absence of the President, the Vice President; or

(c) in the absence of the President and Vice President, such member as the members present may elect from among their number for the purpose of that meeting.

(7) A decision of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

(8) The Council may invite any person whose presence it considers necessary, to attend and participate in the deliberations of a meeting of the Council, but such person shall have no vote.

Committees of
Council

19. (1) The Council may, for purpose of performing its functions, establish such committees as it considers appropriate, and may delegate, to any such committee, such of its functions as it considers necessary.

(2) Without derogating from the generality of subsection (1), the Council may establish the following committees, the —

(a) technical committee;

(b) training and professional development committee; and

(c) finance and administrative committee.

(3) The Council may appoint, to committees established under subsection (1), such number of members of the Council and such number of persons with specialised skills, not being members of the Council, as it considers appropriate, and the members of such committee shall hold office for such period as the Council may determine.

(4) The members of the committee who are not members of the Council may take part in the proceedings of the committee, but shall not have the right to vote.

(5) Subject to the specific or general directions of the Council, a committee established under this section may regulate its own procedure.

(6) Unless in appointing any such committee the Council has appointed a chairperson and vice chairperson, the committee shall elect from among their number, a chairperson and a vice chairperson of the committee.

(7) The Council may revoke or amend any delegation made under the provisions of subsection (1) and may attach conditions to such delegation, including general or particular directions, as to the manner in which any delegated power is to be exercised.

Meetings of
committees of
Council

20. (1) The chairperson or vice chairperson of a committee may at any time convene a meeting of the committee.

(2) At any meeting of a committee, the majority of members of the committee or such other number as may be fixed by the Council in any particular case shall form a quorum.

(3) Any reference in this Act to the Council or to the President of the Council in relation to the exercise of any power which the Council has delegated to a committee shall be construed as including a reference to that committee or to the chairperson of that committee as the case may be.

Disclosure of
interest

21. (1) Where a member is present at a meeting of the Council or any committee, at which meeting a matter which is the subject of consideration is one in which he or she is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Council or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter.

(2) A disclosure of interest made in accordance with subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Council or committee is made benefiting such member, such decision shall be null and void.

(4) A member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding nine months, or to both.

22. (1) A member of the Council or any committee and any other person assisting the Council shall observe and preserve the confidentiality of all matters coming before the Council or committee, and such confidentiality shall subsist even after the termination of the term of office or the mandate.

Confidentiality

(2) Any member or any person to whom confidential information is revealed through working with the Council or committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any member or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding nine months, or to both, and for a second or subsequent offence to a fine not exceeding P15 000, or to imprisonment for a term not exceeding 12 months, or to both.

PART V – *General Meetings of the Institute*

23. The Institute shall hold an annual general meeting in accordance with its rules within four months of the end of the financial year.

General meeting

24. The Institute may hold a special general meeting upon giving such notice as may be prescribed in the rules of the Institute.

Special general meeting

25. (1) Every fully paid-up member of the Institute shall be entitled to receive notice of and attend a general and special meeting, but only a person registered under section 30 and such other person of a class of membership registered in accordance with section 28, as shall be stated in the rules of the Institute, shall be entitled to vote at each meeting in person or by proxy.

Convening and procedure of meetings

(2) The Council shall submit for approval to each annual general meeting a statement of income and expenditure and a balance sheet for the financial year together with the report of the auditor.

(3) At all general meetings of the Institute, the President, or in his absence, the Vice President shall preside.

(4) In the absence of the President and Vice President, the chairperson shall be elected from among members of the Council present.

(5) Save as otherwise provided in the rules of the Institute, all questions to be decided at a general meeting of the Institute shall be by majority vote of those present and entitled to vote in terms of subsection (1).

(6) The person presiding at any meeting shall, in the case of equality of votes on any issue being discussed at that meeting, have a second or casting vote in addition to his or her deliberative vote.

PART VI – *Chief Executive and other staff of the Council*

Chief Executive

26. (1) The Minister shall, on the recommendation of the Council, appoint a Chief Executive of the Institute for a fixed contract period, not exceeding five years, who shall be eligible for re-appointment, as the Minister may determine.

(2) A person shall not be appointed as Chief Executive unless he or she possesses such experience and training in such discipline as the Minister may determine, and he or she has demonstrated that he or she is competent to carry out the functions of the Institute.

(3) The Chief Executive shall, subject to such directions on matters of policy as may be given by the Council, be responsible for the day to day management of the affairs of the Institute.

(4) The Chief Executive may resign from office by giving three months notice in writing to the Minister.

(5) The Minister may, on the recommendation of the Council, remove the Chief Executive from office by giving him or her three months notice in writing, or by paying him or her three months salary in lieu of notice.

(6) The Chief Executive may delegate, to any senior officer of the Institute, the exercise of any powers which he or she is authorised to exercise under this Act.

Appointment of
staff of
Institute

27. (1) The Council shall, on the recommendation of the Chief Executive appoint the following executive officers –

(a) the Technical Director who shall be a professional accountant with at least five years of audit experience;

(b) the Director of Training and Professional Development who shall be a professional accountant with at least five years of experience at institutions of higher education or universities; and

(c) any other Directors.

(2) The contracts of the Directors of the Institute shall not exceed a term of five years, and may be renewed at the discretion of the Council.

(3) The Chief Executive shall appoint such other staff as may be necessary for the proper discharge of the functions of the Institute.

(4) The terms and conditions of employment of staff of the Institute shall be as may be determined by the Council in consultation with the Minister.

PART VII – *Membership and Registration by the Institute*

Classes of
membership

28. (1) There shall be such classes of membership as shall be provided in the rules of the Institute.

(2) Each class of membership shall have such rights, privileges and obligations as may be prescribed in the rules of the Institute.

(3) A person may apply to the Institute for registration as member in accordance with the provisions of the rules of the Institute.

29. (1) Subject to the provisions of this Act, the Council shall cause to be kept, maintained and updated, registers in the following manner —

- (a) Register of Professional Accountants, specifying the name and all relevant particulars of every registered professional accountant;
- (b) Register of Certified Auditors, specifying the name and all relevant particulars of every registered certified auditor;
- (c) Register of Member Firms, specifying the name and all relevant particulars of every registered member firm; and
- (d) any other Register for any matter the Institute deems necessary in terms of section 6 (1) (e) (iv), specifying the relevant information regarding the matter.

(2) The registers shall be kept at the offices of the Council and shall be open to inspection during office hours to any member of the public upon payment of such fee as may be prescribed.

(3) The Institute shall publish —

- (a) not later than three months after the end of its financial year —
 - (i) an annual list of professional accountants and certified auditors, and
 - (ii) names of member firms,

in two consecutive issues of the *Gazette*, Daily News or any private newspaper of national circulation;

- (b) annually in its Public Register, the names of professional accountants, certified auditors and member firms; and
- (c) in its website, a current list of all such professional accountants, certified auditors and member firms, and maintain such website.

30. (1) A person shall not hold himself or herself out as a professional accountant, or designation likely to create the impression that he or she is a professional accountant, unless he or she is registered with the Institute as a professional accountant.

Registration of
professional
accountant

(2) A person may apply to the Institute to be registered as a professional accountant, in such form and manner as may be prescribed if he or she —

- (a) has fulfilled the qualification criteria for the Institute in that he or she —
 - (i) holds the Botswana Professional Accountancy Qualification, and
 - (ii) has satisfied the practical training requirements and other internship related prerequisites; or
- (b) is a member of an IFAC recognised professional accountancy body and —
 - (i) satisfies the Institute's requirements relating to qualifications in the field of accountancy, and
 - (ii) has a minimum of three years practical experience in the field of accountancy.

(3) The Institute may require an application under this section to be accompanied by such fees and information as may be determined by the Institute, in its rules.

(4) The Institute shall register the applicant as a professional accountant and enter his or her name and such particulars as the Institute considers relevant, in the Register of Professional Accountants, where the applicant —

- (a) has successfully completed the professional qualification examination conducted or arranged by the Institute;
- (b) is a member of an IFAC recognised professional accountancy body;
- (c) is of good character and has not been convicted of an offence involving fraud or dishonesty in any country;
- (d) has successfully undergone such examination or assessment as the Institute may deem fit for the purpose of determining whether he or she possesses adequate professional accountancy knowledge and skills; and
- (e) has paid such fees as the Institute may determine.

(5) The Institute may require, as a condition for a professional accountant to remain its member, that he or she —

- (a) complies with any continuing educational and professional requirements as may be specified in the rules of the Institute; and
- (b) demonstrates an independence of mind in the conduct of his or her functions as a professional accountant.

(6) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P500 000, or to imprisonment for a term not exceeding 10 years, or to both.

Registration of
certified auditor

31. (1) Every professional accountant who intends to practise as an auditor and be registered as a certified auditor shall apply in writing to the Institute in such form and manner as may be prescribed.

(2) An application under subsection (1) shall be accompanied by such fees and such information as may be determined by the Institute in its rules.

(3) The Institute may register an applicant under subsection (1) as a certified auditor and enter his or her name and such particulars as the Institute considers relevant in the Register of certified auditors, where it is satisfied that the applicant —

- (a) meets the requirements laid down in the rules of the Institute;
- (b) has made such arrangements as may be provided in the rules of the Institute, for continuing professional education;
- (c) is a fit and proper person, as defined in the rules of the Institute; and
- (d) at the date of the application, has the necessary competence to practise as a certified auditor, and a period of more than one year has elapsed between the date he or she has undertaken any training as provided by the rules of the Institute.

(4) The Institute shall require, as a condition for a certified auditor to remain as a member, that he or she —

- (a) complies with any continuing educational, training and professional requirements as may be specified in the rules of the Institute; and
- (b) demonstrates an independence of mind in the conduct of his or her functions as an auditor.

32. (1) On receipt of an application under section 30 or 31 the Institute may —

(a) refuse to register an applicant as a professional accountant where the applicant —

(i) does not satisfy the requirements specified in section 30 (4), or
(ii) is otherwise unfit to be registered as a professional accountant;

(b) refuse to register an applicant as a certified auditor where the applicant —

(i) does not satisfy the requirements specified in section 31 (3),
(ii) has his or her licence or approval to practise as a certified auditor withdrawn, suspended, cancelled or revoked in any country, or
(iii) is otherwise unfit to be registered as a certified auditor.

(2) Where the Institute refuses to register an applicant under this section, it shall inform the applicant in writing of its refusal as soon as is reasonably practicable.

(3) A person aggrieved by the refusal of the Institute to register him or her as a professional accountant or certified auditor may, within 30 days of the decision of the Institute, apply in writing to the Council for review of the decision of the Institute and such application shall set forth any facts or legal analysis that would support a decision to register him or her.

(4) Within 21 days of receipt of notification of the decision of the Council, the aggrieved person may, after written notification to the Council, appeal to the Appeals Committee in writing, setting forth the facts or analysis that form the grounds for the appeal.

33. (1) Every firm that provides or intends to provide professional accounting services shall apply for registration to the Institute.

(2) An application under subsection (1) shall be made in writing to the Institute in such form and manner as may be prescribed.

(3) The Institute shall register the firm and enter its name and such particulars as it considers relevant in the Register of Member Firms, upon being satisfied that —

(a) all of the partners of the firm, who are in the accountancy profession are registered with the Institute;

(b) there is a written undertaking by the applicant firm and the partners who are in the accountancy profession, that they shall be bound by the disciplinary provisions of the rules of the Institute individually; and

(c) the applicant firm holds a professional indemnity insurance of such amount as the Institute may determine in its rules, or provides such other financial guarantee as the Institute may from time to time determine.

34. Every registered accountant or member firm shall, whenever there is a change of name or particulars of such accountant or firm, as registered in the respective registers, notify the Institute of such change within 30 days of the change occurring, in such manner as the Institute may require in its rules.

Refusal to register a professional accountant or certified auditor

Registration of member firm

Change of particulars

Certificate of registration and practising certificate

- 35. (1) Where the Institute registers —**
- (a) a person as a member of the Institute;
 - (b) a person as a professional accountant;
 - (c) a person as a certified auditor; or
 - (d) a firm as a member firm,

it shall issue to the person or firm, as the case may be, a certificate of registration.

(2) Where the Institute registers a person as a certified auditor, it shall issue to him or her, a practising certificate.

(3) A certificate of registration and a practising certificate shall be issued in such form and upon payment of such fees as may be determined by the Institute in its rules.

Renewal of registration

36. (1) A certificate of registration and a practising certificate shall be renewed annually.

(2) Any member or member firm wishing to renew a certificate of registration upon expiry thereof may, not less than one month before the date of expiry, make an application to the Institute for the renewal of the certificate in such form as may be prescribed.

(3) Any certified auditor wishing to renew his or her practising certificate upon expiry thereof may, not less than one month before the date of expiry, make an application to the Institute for the renewal of the certificate in such form as may be prescribed.

(4) An application under subsections (2) and (3) shall be accompanied by such fees and such information as may be determined by the Institute in its rules.

Cancellation or suspension of registration

37. (1) The Institute may either suspend or cancel the registration of a member or a member firm, and order the removal of such member or member firm from the relevant register where —

- (a) the member or member firm has obtained registration by fraud or misrepresentation;
- (b) the member or member firm no longer satisfies or has acted in breach of any rule of the Institute;
- (c) in the case of a professional accountant, the registration of that professional accountant has been suspended or cancelled by a professional accountancy body of which he or she is a member;
- (d) the member or member firm has acted in breach of the provisions of this Act; or
- (e) the member has been convicted of an offence, whether in Botswana or another jurisdiction —
 - (i) for which he or she could have been sentenced to imprisonment without the option of a fine, or
 - (ii) involving dishonesty.

(2) Where the Institute cancels a practising certificate, it may also cancel the membership in the Institute of the holder of the practising certificate.

(3) Where the Institute suspends a practising certificate, it may suspend the membership of the holder of the practising certificate of the Institute for the period for which the certificate has been suspended.

38. Where a member or member firm has been removed from the register or the registration has been suspended, the Institute may, either of its own volition, or on the application of the concerned member or member firm, made in such form as may be prescribed, and after holding such inquiry as the Council may consider necessary, direct that the name of the member or member firm be restored to the register.

Restoration of
name to register

39. (1) The Council shall make, and may from time to time amend or add to, regulations prescribing the conditions under which persons may become and remain registered students of the Institute and fees payable by them.

Registered
students

(2) A separate register of registered students of the Institute shall be maintained and kept.

40. (1) A register specified in this Act shall be prima facie evidence of the matters set out therein.

Register to be
prima facie
evidence

(2) Notwithstanding the generality of subsection (1), a certificate purporting to be under the Seal of the Institute to the effect that —

(a) the name of a person or firm does not appear in the register shall be prima facie evidence that the person or firm is not a member of the Institute;

(b) the name of a person or firm appears in the register shall be prima facie evidence that the person or firm is a registered member of the Institute; or

(c) a member has been suspended from practice as such for the period specified in the register shall be prima facie evidence that the member has been suspended from practice for that period.

(3) A copy of an entry in the register, a document in the custody of the Institute or an extract from the register or from any document purporting to be certified by the Chief Executive, shall be admitted in evidence in all courts without further proof or production of the original.

41. A person who —

(a) makes or causes to be made an unauthorised entry, alteration or deletion in the register;

(b) procures or attempts to procure for himself or herself or another person, registration, or a certificate of registration or a practising certificate by means of fraud, false pretence or concealment of a material fact;

(c) makes or causes to be made in connection with an application for registration, a false declaration in a document used for the purpose of establishing his or her identity;

(d) wilfully destroys or renders illegible an entry in the register;

(e) without the permission of the holder, wilfully destroys or renders illegible a certificate of registration or a practising certificate; or

(f) forges or utters, knowing the same to be forged, a document purporting to be a certificate of registration or a practising certificate, commits an offence and is liable to a fine not exceeding P250 000, or to imprisonment for a term not exceeding five years, or to both.

Offences in
connection
with
registration

PART VIII – *Disciplinary and other Inquiries*

Appointment
of Disciplinary
Committee

42. At the first meeting of the Council held after each annual general meeting of the Institute, or as soon as possible thereafter, the Council shall appoint a Disciplinary Committee consisting of –

- (a) four members of the Institute registered under section 30, one of whom shall be a member of the Council; and
- (b) a legal practitioner admitted to practise in the courts of Botswana and having at least five years experience, who shall be the chairperson.

Disciplinary
powers of
Committee

43. (1) A member of the Institute shall be guilty of professional misconduct if he or she commits any of the acts or omissions set out in the Schedule.

(2) Subject to the provisions of this Act, the Disciplinary Committee may hold an inquiry where the Council has reasonable grounds to believe, by a written complaint made to it that a member –

- (a) is suspected of professional misconduct pursuant to subsection (1);
- (b) is suspected of committing a material irregularity;
- (c) has contravened or is in breach of the code, rules or standards of the Institute which are in accordance with the rules of the Institute; or
- (d) has become mentally incapable and is unfit to practise as referred to in section 46.

(3) Where the Disciplinary Committee is notified of a complaint pursuant to subsection (2), it shall cause to be sent, to a member against whom a complaint has been made under subsection (2), a registered letter to his or her address as shown in the register, containing a notice setting out the complaint against him or her and the Disciplinary Committee shall afford the member an opportunity to be heard either by himself or herself or by a legal representative.

(4) For the purposes of an inquiry under this section, the Disciplinary Committee shall –

- (a) administer oaths;
- (b) summon persons to attend and give evidence; and
- (c) order the production of documents.

(5) All summonses and orders issued under the hand of the chairperson or vice chairperson shall be deemed to be issued by the Disciplinary Committee.

(6) The chairperson, or in his or her absence the vice chairperson, shall record or cause to be recorded a summary of any oral evidence given at an inquiry under this section.

(7) Subject to the provisions of this Act, the Disciplinary Committee shall regulate its own procedure at an inquiry held under this Part, but all parties having an interest in the inquiry shall be advised by the Council of the form of the procedure of such inquiry.

Disregard of
summons, etc.

44. (1) A person to whom a summons or order is issued under section 43 and to whom such summons or order is served, who –

- (a) refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons;
- (b) refuses, without sufficient cause, to answer fully and satisfactorily, questions put to him or her by or with the concurrence of the Committee; or
- (c) refuses or omits, without sufficient cause, to produce any document in his or her possession or under his or her control, commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding two months, or to both.

(2) A person giving evidence before an inquiry under this Part shall, in respect of evidence given by him or her or documents produced by him or her, be entitled to all the privileges to which he or she would be entitled as a witness before the High Court.

45. (1) If, after inquiry, the Disciplinary Committee is of the opinion that the case under consideration has been proven wholly or in part, it shall make a finding to that effect and may make any one or more of the following orders against the member —

Powers of
Committee at
inquiry

- (a) that he or she be reprimanded or cautioned;
- (b) that he or she be suspended from membership for such period as shall be specified in the order;
- (c) that his or her certificate of registration or practising certificate be withdrawn; or
- (d) that his or her name be removed from the register.

(2) A person who has been suspended or whose name has been removed from the register under subsection (1) shall not hold himself or herself out as a professional accountant or certified auditor, and his or her certificate of registration shall be cancelled for the period of suspension and his or her name shall be restored to the register upon application in writing to the Institute, and in terms of section 38.

(3) An inquiry held under this Part shall be deemed to be a judicial proceeding.

46. (1) Where it is alleged, under section 43, that a member has become mentally incapable of performing his or her duties, to such an extent that it would be contrary to the public interest to allow him or her to continue to practise, the Committee shall —

Unfit to
practise

- (a) call for information regarding the allegation;
- (b) cause such investigation to be made as it thinks necessary; and
- (c) seek such medical advice or other assistance as it may require.

(2) The provisions of sections 43, 44 and 45 shall, with the necessary modifications, apply to a member referred to under subsection (1).

47. (1) The Minister shall, by Order, appoint an Appeals Committee, which shall hear and determine appeals made from the decisions of the Disciplinary Committee.

Appointment of
Appeals
Committee

(2) The Appeals Committee shall, in consultation with the Institute, determine its own procedure for the hearing of appeals made in terms of subsection (1).

(3) The Appeals Committee shall, in consultation with the Institute, formulate and issue such rules as it considers appropriate to deal with all matters related to the hearing of appeals.

Appeal against
decision of
Disciplinary
Committee

48. (1) Subject to subsection (2) any person aggrieved by a decision of the Disciplinary Committee made under section 45 (1) may appeal therefrom to the Appeals Committee.

(2) An appeal to the Appeals Committee against a decision made under section 45 (1) may be made only where —

(a) notice of such appeal, setting out the grounds of appeal, has been served on the Institute within 14 days after the decision of the Disciplinary Committee is communicated to him or her; and

(b) the appeal is lodged with the Appeals Committee within 14 days after the notice referred to in paragraph (a) is served on the Institute.

(3) The decision of the Disciplinary Committee to —

(a) suspend or remove the name of any member from the register;

(b) to withdraw or suspend his or her certificate of registration; or

(c) to withdraw a certified auditor's practising certificate,

shall be effective immediately, notwithstanding any appeal which may be pending unless either the Disciplinary Committee expressly suspended the operation of its decision pending the outcome of such appeal or the aggrieved person has obtained from the Appeals Committee an order staying the operation of the decision of the Disciplinary Committee.

Appeal against
decision of
Appeals
Committee

49. (1) A member aggrieved by a decision of the Appeals Committee may, within 14 days of the date of the decision, appeal to the Minister.

(2) A person aggrieved by a decision of the Appeals Committee refusing to remove the name of a member from the register, or to suspend such member may, within 14 days of the date of the decision, appeal to the Minister against such decision.

(3) A person aggrieved by a decision of the Minister made under subsections (1) and (2) may, within 30 days of the date of the decision, appeal to the High Court.

(4) The High Court may, on hearing an appeal in terms of subsection (1) —

(a) confirm, vary or set aside any decision of the Minister; or

(b) remit the matter to the Minister and Council for further consideration and may make such other orders as to costs as it considers appropriate.

Publication of
outcome of
proceedings

50. (1) Where the Chief Executive is directed by the Council, he or she shall cause to be published by notice in the *Gazette*, the name of any member whose name has been removed or who has been suspended under this Part.

(2) A notice published in accordance with subsection (1) shall be prima facie evidence that the name of a member specified in the notice has been removed or the member so specified has been suspended from practice for the period specified in such notice.

PART IX – *Financial Provisions*

51. (1) The revenues of the Institute shall consist of —

Revenues of
Institute

- (a) such monies as may be appropriated by the National Assembly;
- (b) fees that the Council may charge for services it may render;
- (c) grants and donations that the Council may receive; and
- (d) such other sources as may be approved by the Government.

(2) The Institute —

- (a) may, subject to the provisions of its rules, raise by way of loans or otherwise, such sums as it requires for the discharge of its functions; and
- (b) shall not accept any grants or donations or raise any loans or moneys from any sources outside Botswana without the approval of the Minister.

(3) The Institute shall use the funds acquired under subsection (1) to meet the costs incurred in its operations and shall use any surplus accrued for such purpose as it may determine.

52. The financial year of the Institute shall be a period of 12 months commencing on the 1st of January and ending on the 31st of December of every year.

Financial year

53. (1) The Institute shall —

Accounts and
audit

- (a) keep and maintain proper books of accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Institute; and
- (b) prepare, in each financial year, a statement of such accounts, which shall be prepared in accordance with International Financial Reporting Standards.

(2) The accounts of the Institute in respect of each financial year shall, within three months of the end thereof, be audited by an auditor appointed by the members at an annual general meeting.

(3) The members at each annual general meeting shall appoint as auditor from amongst them, a member who shall hold office until its next annual general meeting.

(4) A person shall not be qualified to be appointed as an auditor where he or she is —

- (a) a member of the Council; or
- (b) a partner of a member of the Council.

(5) The auditor shall retire at the next annual general meeting after his or her appointment, but shall be eligible for re-appointment.

(6) The Institute in a general meeting may, by resolution passed by not less than two-thirds of the members entitled to vote and voting thereon, remove the auditor from his or her office before the expiration of his or her period of office, and may, by resolution passed at the same meeting by a majority of the members entitled to vote and voting thereon, appoint in his or her stead another auditor.

(7) In default of an appointment under subsection (4), the Council shall appoint another auditor.

(8) The remuneration of the auditor shall be determined by the Council.

(9) An auditor appointed under subsection (3) shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on, whether or not —

- (a) the auditor has received all information and explanations which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the Institute have been properly kept;
- (c) the Institute has complied with all the financial provisions of this Act with which it is the duty of the Institute to comply; and
- (d) the statement of accounts prepared by the Institute was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Institute.

(10) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion thereof, be forwarded to the Institute by the auditor.

Annual report

54. (1) The Institute shall, within a period of six months of the end of the financial year, submit to the Minister, a comprehensive report on the operations of the Institute during that year, together with the auditor's report and the accounts audited under section 53.

(2) The Minister shall lay before the National Assembly, a report compiled in accordance with subsection (1), the financial report and the auditor's report within three months of receipt, or as soon as practicable thereafter.

PART X – *Miscellaneous provisions*

Indemnity

55. No matter or thing done or omitted to be done by a member or staff of the Institute shall, if the matter or thing is done or omitted to be done in good faith in the course of the operations of the Institute, render a member or staff personally liable to an action, claim or demand.

Offences and penalties

56. (1) A person who knowingly and wilfully makes a false statement, or a misleading statement, with a view to gaining any advantage, concession or privilege under this Act, whether for himself or for any other person, commits an offence and is liable to a fine not exceeding P250 000, or to imprisonment for a term not exceeding five years, or to both.

(2) An accountant or partner in a member firm who knowingly employs or engages in the capacity of a professional accountant or certified auditor any person who was registered and —

- (a) whose name has been removed from the register and has not been restored; or
 - (b) who has been suspended from membership in terms of this Act, during the period of suspension, save with the prior written consent of the Institute, which consent may be given for such period and subject to such conditions as the Institute may determine,
- commits an offence and is liable to a fine not exceeding P500 000, or to imprisonment for a term not exceeding 10 years, or to both.

(3) Any member, committee member and employee of the Institute, who contravenes or fails to comply with provisions of this Act or rules made under this Act commits an offence and is liable to a fine not exceeding P500 000, or to imprisonment for a term not exceeding 10 years, or to both.

57. (1) The Minister may, after consultation with the Institute, make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

Regulations

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) the fees and fines to be paid under this Act;
- (b) the form of any document referred to in this Act and the manner in which it shall be prepared, executed, registered, transmitted or delivered;
- (c) matters to be included in the document submitted with an application for registration; or
- (d) the submission of annual returns.

(3) The Institute may, in consultation with the Minister, make rules prescribing —

- (a) the terms and conditions of the membership to the Institute;
- (b) the procedure for inquiring into complaints against members and to institute disciplinary proceedings;
- (c) the circumstances and conditions for an appeal against a decision of the Institute;
- (d) the conduct of the meetings of the Institute;
- (e) the need for continuous training and education for both professional accountants and certified auditors;
- (f) the establishment of other classes of membership; and
- (g) any other matter relating to activities of the Institute.

58. The Accountants Act is hereby repealed.

Repeal of
Cap. 61:05

59. All accounting and auditing standards adopted and published by the Institute under the repealed Act, and in force immediately prior to the coming into operation of this Act, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply until the publication of new accounting and auditing standards under the Financial Reporting Act.

Savings

Act No. 11 of
2010

60. (1) Notwithstanding anything contained in sections 28, 30 and 31, every person who, immediately before the coming into operation of this Act, is a member in good standing of the Institute —

Transitional
provisions

- (a) shall, upon providing evidence of such membership to the Institute within three months of the commencement date, be deemed to be registered as a member;
- (b) shall, upon providing evidence of such registration with the Institute within three months of the commencement date, be deemed to be registered as a professional accountant under this Act; or
- (c) who, additionally, is offering audit and assurance services to the public, may continue to offer such audit and assurance services to the public without being registered as a certified auditor under this Act —

- (i) during the period of six months beginning with the commencement date, and
- (ii) where, an application for registration as a certified auditor is made within that period, until that application is finally disposed of or withdrawn.

Cap. 42:01

(2) Notwithstanding anything contained in section 31, every person who, immediately before the coming into operation of this Act, is or has been working as an auditor pursuant to the Companies Act, may continue to work as an auditor under that Act without being registered under this Act —

- (a) during the period of six months beginning with the commencement date; and
 - (b) where, within that period an application is made for registration, until that application is finally disposed of or withdrawn.
- (3) Notwithstanding anything contained in this Act —
- (a) the Secretary, who is the Chief Executive of the Institute, appointed under the repealed Act, shall continue as Chief Executive and Secretary of the Council, as if appointed under this Act, for the remainder of the appointment period;
 - (b) the members of the Council and committees appointed under the repealed Act, shall serve as if appointed under this Act, for the remainder of tenure of their office; and
 - (c) every person who, immediately before the coming into operation of this Act, is under the employment of the Institute, may continue to be an employee of the Institute under this Act.

SCHEDULE
(section 43 (1))

ACTS OR OMISSIONS CONSTITUTING PROFESSIONAL MISCONDUCT

Each of the following acts or omissions on the part of a member shall constitute professional misconduct, namely —

- (a) allowing any other person to hold himself or herself as a member, unless such person is also a member of the Institute;
- (b) allowing any other person to practise in his or her name as a professional accountant, unless such person is also a professional accountant and is in partnership with or employed by him or her;
- (c) entering into partnership with any person other than a professional accountant or securing, either through or by means of a person not qualified to be a professional accountant or by means which are not open to an accountant, any professional business;
- (d) paying or allowing or agreeing to pay or allow, directly or indirectly to any person other than an accountant or a retired partner or the legal representative of such partner, any share, commission or brokerage out of the fees or profits for his or her professional services;
- (e) accepting or agreeing to accept any part of the fees or profits of the professional work of advocate, attorney, auctioneer, broker, or other agent who is not a professional accountant;
- (f) soliciting clients for professional work in a manner other than that approved by the Council and as advised to members from time to time;
- (g) advertising professional attainment or services in a manner other than that approved by the Council and as advised to members from time to time;
- (h) disclosing information acquired in the course of a professional engagement without the consent of the client, except as required by any law for the time being in force;
- (i) certifying or submitting in his or her name or in the name of his or her firm a report of an examination of financial statements (unless the examination of such statements) and the related records have been made by him or her, or a partner or employee in his or her firm;
- (j) expressing his or her opinion on financial statements of any business or any enterprise in which he or she, his or her immediate family, his or her firm or partner in his or her firm has an interest, unless he or she discloses the interest also in his or her report;
- (k) charging in respect of any professional employment, other than where customary, fees which are based on a percentage of profits or which are contingent on results;
- (l) failing to disclose a material fact known to him or her, which is not disclosed in the financial statements, but disclosure of which is necessary for the financial statements to show a true and fair view;
- (m) failing to report a material misstatement known to him or her which appears in the financial statements with which he or she is concerned in a professional capacity;
- (n) gross negligence in the conduct of professional duties;
- (o) failing to obtain sufficient information to warrant the expression of an opinion;
- (p) failing to keep the funds of a client in a separate banking account or failing to use such funds for purposes for which they are intended;

- (q) including in any statement, return or form to be submitted to the Council any particulars knowing them to be false;
- (r) carrying on the business of an accountant through a body corporate in a manner in breach of any of the above provisions constituting professional misconduct;
- (s) carrying on the business of an accountant, without having obtained a certificate of registration;
- (t) carrying on the business of an auditor, without having obtained a practising certificate; and
- (u) generally, doing any act which is likely to bring the profession of accountancy or the Institute into disgrace, contempt or disrespect.

PASSED by the National Assembly this 2nd day of August, 2010.

BARBARA N. DITHAPO,
Clerk of the National Assembly.