

BILL

To provide for the continued existence of the Public Accountants and Auditors Board as the Accountants' and Auditors' Regulatory Authority; to provide for the governance of the Authority; to provide for the constitution, objectives, functions and powers of the Board of the Authority and its committees; to provide for accreditation of professional bodies; to provide for the registration of auditors, accountants and accounting technicians; to provide for an inspectorate of the Authority; to set out the disciplinary powers of the Board; to repeal the Public Accountants and Auditors Act, 1951; and to provide for incidental matters.

(Introduced by the Minister responsible for finance)

BE IT ENACTED as passed by the Parliament and assented to by the President of the Republic of Namibia, as follows:

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PART 1
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context indicates otherwise –

“accounting profession” denotes the occupation of rendering accounting services under this Act;

“accounting services” means the measurement, processing and communication of financial information, including but is not limited to-

- (a) financial reporting services including preparation or compilation of financial statements, disclosures and notes to accounts and corporate secretarial services;
- (b) financial analyses and verification;

- (c) recording, preparing or summarising accounting records;
- (d) forensic accounting services;
- (e) valuation services ordinarily provided by a registered accountant or registered accounting technician;
- (f) financial consulting or advisory services ordinarily provided by a registered accountant or registered accounting technician;
- (g) bookkeeping services;
- (h) payroll services;
- (i) designing and implementing internal control or risk management procedures related to the preparation or control of financial information;
- (j) financial consulting or advisory services in relation to the designing and implementing of financial information technology systems;
- (k) tax services relating to:
 - (i) preparation of tax forms;
 - (ii) payroll tax;
 - (iii) customs duties;
 - (iv) identification of public subsidies and tax incentives;
 - (v) support regarding tax inspections by tax authorities;
 - (vi) calculation of direct and indirect tax and deferred tax;

(vii) provision of tax advice;

(l) any other services set out in the standards,

but excludes an employee rendering accounting services to his or her employer in the course of his or her employment;

“accounting standards” means the accounting standards issued, or applicable international standards adopted, by the Board under this Act;

“accounting pronouncements” means those practice statements, guidelines, directives and circulars developed, adapted or adopted and issued by the Board which a registered accountant must comply with and may incorporate pronouncements on accounting issued by an international body;

“accredited body” means a body of, or a body accredited by the Authority under this Act which represents-

(a) registered auditors;

(b) registered accountants;

(c) registered accounting technicians; or

(d) a combination of the persons referred to in paragraphs (a), (b) and (c);

“audit” means an independent examination by a registered auditor in accordance with the auditing standards of-

(a) financial statements with the objective of expressing an opinion on whether financial statements are prepared in all material respects in terms of a recognised financial reporting framework and any applicable legal requirements;

(b) financial or other information, prepared in accordance with auditing standards, with the objective of expressing an opinion thereon,

and includes audits performed on behalf of the Auditor-General and “auditing” and “auditing services” have a corresponding meaning;

“auditing profession” denotes the occupation of registered auditors under this Act;

“auditing pronouncements” means those practice statements, guidelines, directives and circulars developed, adapted or adopted and issued by the Board which a registered auditor must comply with in the performance of an audit and may incorporate pronouncements on auditing issued by an international body;

“auditing standards” means the auditing standards issued, or applicable international standards adopted, by the Board under this Act;

“Auditor-General” means the person appointed in that capacity under Article 127(1) of the Namibian Constitution;

“Authority” means the Accountants’ and Auditors’ Regulatory Authority referred to in section 3;

“Board” means the Board of the Authority referred to in **section 4**;

“Board member” means a member of the Board appointed in terms of section 4(1);

“chief executive officer” means the person appointed as chief executive officer of the Authority under **section 22**;

“certificate to practise” means a certificate issued by the Authority under **Part 8** to a registered auditor, a registered accountant, registered accounting technician or firm;

“close corporation” means a close corporation referred to in section 2(1) of the Close Corporation Act, 1988 (Act No. 26 of 1988), which has been registered under Part III of that Act;

“committee” means a committee of the Board established under **Part 5**;

“Companies Act” means the Companies Act, 2004 (Act No. 28 of 2004);

“company” means a company as defined in section 1(1) of the Companies Act;

“day” means calendar days including Saturdays, Sundays and public holidays;

“disciplinary rules” means the disciplinary rules made under **section 74(1)(b)**;

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

“financial information”, in relation to an entity, refers to data about transactions of that entity and includes without limitation-

- (b) records of liabilities;
- (c) records of assets;
- (d) records, if any, of instances of default by the entity in respect of any debt;
- (e) records of the statement of financial position and statement of cash-flow, statement of comprehensive income, statement of changes in equity of the entity or records of a similar nature however described; and
- (f) such other information as may be specified in writing by the Board.

“firm” means a sole proprietor, partnership, close corporation or private company referred to in Part 8;

“IASB” means the International Accounting Standards Board or its successor body;

“IAASB” means the International Auditing and Assurance Standards Board, or its successor body;

“IESB” means the International Ethics Standards Board for Accountants;

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

“improper conduct” means any non-compliance with this Act or any rules, charters or codes of conduct prescribed in terms of this Act or any conduct specified by the standards as constituting improper conduct;

“international bodies” refers to the IASB, IFAC, IESB and IAASB and related bodies recognised by the Board;

“international standards” means international standards, rules or regulations issued by or under the auspices of international bodies;

“management board”, in relation to-

- (a) a company, means the board of directors of that company;
- (b) any other entity, means the body or individual responsible for the governance of the business of such entity;

“Minister” means the Minister responsible for finance;

“practice review” means review by the Authority in accordance with **Part 11** of the manner in which a registered person carries on public practice or an accredited body conducts its business;

“prescribe” means prescribe by regulation published in the *Gazette* and “prescribed” and “prescribing” have a corresponding meaning;

“private company” means a private company as defined in section 22 of the Companies Act;

“Public Enterprises Governance Act” means the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019);

“public practice” means the provision of auditing or accounting services to the public for reward but does not include services which are substantially at the command of the State and “practise” or “practice” has a corresponding meaning;

“registered accountant” means a person to whom the Authority issued a certificate to practise as a registered accountant under **Part 8**;

“registered accounting technician” means a person to whom the Authority issued a certificate to practise as registered accounting technician under **Part 8**;

“registered auditor” means a person to whom the Authority issued a certificate to practise as a registered auditor under **Part 8**;

“registered person” means a registered auditor, registered accountant, registered accounting technician or firm registered under this Act;

“relevant register” means any of the registers maintained by the Authority under **section 51**;

“repealed Act” means the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951 repealed under **section 103**);

“reportable irregularity” means any unlawful act or omission committed by any person responsible for the management of an entity, which-

- (a) has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his, her or its dealings with that entity;
- (b) amounts to fraud or theft or similar dishonest conduct; or

- (c) represents a material breach of any fiduciary duty owed by such person to the entity or any partner, member, shareholder, creditor or investor of the entity under any law applying to the entity, its management or to the conduct of its business;

“standards” means the standards issued by the Board under this Act;

“this Act” includes-

- (a) regulations, rules or other subordinate measures made or issued by the Minister under this Act; and
- (b) standards and other subordinate measures issued by the Board under this Act;

“trainee accountant” means a person registered by the Authority to commence training to become a registered accountant under **section 44**;

“trainee accounting technician” means a person registered by an accredited body to commence training to become a registered accounting technician under **section 47**;

“trainee auditor” means a person registered by the Authority to commence training to become a registered auditor under **section 47**;

“training contract” means a written contract of training in the form and with the content set out in the training standards, whereby a trainee auditor, trainee accountant or trainee accounting technician agrees to serve under the pupillage of a training officer;

“training officer” means-

- (a) a registered auditor who provides training to a trainee auditor; or
- (b) a registered accountant who provides training to a trainee accountant; or

- (c) a registered accounting technician who provides training to a trainee accounting technician,

under a training contract;

“training standards” means the training standards made by the Board under **section 17(1)(c)**; and

“unprofessional conduct” means improper conduct, or conduct which, if regard is had to any code of professional conduct applicable to the accounting or auditing profession or issued by an accredited body, as the case may be, is improper or dishonourable or unworthy, and includes acts and omissions specified under **section 76**.

Objects of Act

2. The objects of this Act are-
- (a) to provide for the continuation, composition, and functions of a regulatory body to regulate the auditing and accounting professions;
 - (b) to provide for accreditation of professional bodies to ensure that all registered persons belong to an accredited body;
 - (c) to provide for the registration of auditors, accountants, accounting technicians and firms and to require them to obtain certificates to practise before commencing public practice;
 - (d) to ensure the regulation of the audit and accounting professions in order to promote the protection of the public interest and the interests of entities;
 - (e) to set rules relating to the practice and accountability of registered persons and to provide for procedures for disciplinary action in respect of unprofessional conduct; and

- (f) to improve the development and maintenance of internationally comparable ethical standards as well as audit and accounting standards for registered persons in a manner that contributes to a sound financial system in order to promote investment and as a consequence employment in Namibia.

PART 2

CONSTITUTION AND GOVERNANCE OF AUTHORITY

Continued existence of Public Accountants' and Auditors' Board

3. (1) Subject to the provisions of this Act, the Public Accountants' and Auditors' Board established by section 2 of the repealed Act, continues to exist, to be known as the Accountants' and Auditors' Regulatory Authority.

(2) The Authority is a juristic person capable, in its own name, of suing and of being sued and, subject to this Act, of performing all acts that a juristic person may lawfully perform.

(3) The Authority –

(a) has jurisdiction throughout Namibia; and

(b) must act independently and impartially.

Constitution of Board

4. (1) Subject to Chapter 2 of the Public Enterprises Governance Act and section 103(1), the Board consists of nine non-executive members appointed by the Minister.

(2) Subject to subsection (3), a person to be appointed under subsection (1) must possess knowledge and a minimum of five years' experience in public practice, corporate governance, finance, law or other related fields of expertise, but not all appointees must be of the same gender: Provided that a person may only be appointed because of his or her experience in public practice, if that person has not engaged in public practice for a period of at least three years preceding such appointment.

(3) Disregarding any vacancy in its membership, the Board must have -

- (a) one registered auditor;
- (b) one registered accountant; and
- (c) one registered accounting technician.

(4) When appointing a member, the Minister must consider, amongst other factors, the need for transparency and representation within the broader demographics of the Namibian population, and the availability of persons to serve as members.

(5) The Board must, as soon as practicable after appointment of all or any of its members, publish by notice in the *Gazette*, and on its website—

- (a) the name of every person appointed;
- (b) the date from which the appointment takes effect; and
- (c) the period for which the appointment is made.

(6) Despite subsection (5), a failure to publish the name of a member pursuant to that subsection does not invalidate that appointment if the member was properly appointed.

Term of office of Board members

5. (1) Despite any other law, a member is appointed for a term of three years and he or she may be reappointed on expiry of such term: Provided that if a member was not reappointed or replaced by a successor, on expiry of his or her term of office, he or she continues to hold office for a further period not exceeding four months.

(2) A member whose term of office expires may be re-appointed, but no person may be appointed for more than two consecutive terms.

(3) Notwithstanding subsection (1), but subject to subsection (2) the Minister must, after expiry of the term of office of the Board, reappoint at least three members appointed in terms of **section 4**.

Disqualification for membership of Board

6. (1) A person is not eligible for appointment as a member if that person-
- (a) is not a Namibian citizen or is not lawfully admitted to Namibia for permanent residence;
 - (b) is a member of Parliament or of a regional or local authority council, unless he or she ceases to be such a member before the date of the proposed appointment;
 - (c) is an office-bearer of any political party, unless he or she ceases to be such an office-bearer before the date of the proposed appointment;
 - (d) has any financial or other interest that is likely to prejudicially affect the performance of his or her duties as member of the Board;
 - (e) has during the period of 10 years immediately preceding the date of commencement of this Act or at any time after that date been convicted, whether in Namibia or elsewhere, of an offence and has been sentenced to imprisonment without the option of a fine;
 - (f) has been removed from an office of trust;
 - (g) has under any law in Namibia or a foreign country been declared to be of unsound mind or under legal disability;
 - (h) is an unrehabilitated insolvent;

- (i) has made an assignment to or arrangement or composition with his or her creditors under a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (j) is disqualified as a director under the Companies Act;
- (k) has at any time been convicted of theft, fraud, forgery or uttering a forged document or perjury; or
- (l) has under this Act or any other law been found guilty of unprofessional conduct by reason whereof he or she is in the opinion of the Minister not a fit person to be appointed.

(2) Despite subsection (1)(a), the Minister may, where he or she considers it necessary and subject to the Immigration Control Act, 1993 (Act No. 7 of 1993), appoint a person as a member of the Board who is not a Namibian citizen or lawfully admitted to permanent residency in Namibia.

Vacation of office

7. (1) A Board member vacates his or her office if the member-
- (a) becomes ineligible for appointment under **section 6**;
 - (b) resigns his or her office by giving the Minister not less than one month's written notice;
 - (c) has without the leave of the Board, been absent from three consecutive meetings of the Board;
 - (d) is removed from office under subsection (2).

(2) The Minister may only remove a member from office after giving written notice to that member and after affording him or her a reasonable opportunity to be heard if the Minister is satisfied that the member-

- (a) is guilty of neglect of duty, demonstrable incompetence or misconduct;
- (b) is incapable of performing the functions of his or her office, by reason of physical or mental illness;
- (c) without authorization of the Board discloses any confidential information to a person not lawfully entitled to receive such information; or
- (d) improperly acts on or uses information obtained as a result of his or her membership of the Board.

(3) If a Board member dies or his or her office becomes vacant because an event referred to in subsection (1) occurred, the Minister may, within a period of 90 days from the date of the death or the occurrence of the event and with due regard to **sections 4 and 6**, appoint a person to fill the vacancy for the unexpired portion of the term of office of the member concerned.

Chairperson and deputy chairperson

8. (1) At the first meeting of the Board after its members were appointed under **section 4** the members must out of their number elect a chairperson and deputy chairperson of the Board.

(2) Subject to the provisions of subsection (1), if the chairperson or deputy chairperson of the Board vacates office before his or her term of office expires, another Board member, must be elected as chairperson or deputy chairperson of the Board, as the case may be.

(3) If the chairperson is absent or for any reason unable to perform the functions of chairperson, the deputy chairperson acts as chairperson, and while the deputy chairperson so acts, he or she has all the powers and performs all the duties of the chairperson.

(4) If both the chairperson and deputy chairperson are absent or unable to preside at a meeting of the Board, the members present must elect another member to act as chairperson at that meeting and while that member so acts, he or she has all the powers and performs all the duties of the chairperson.

(5) The chairperson or deputy chairperson may vacate his or her office, as the case may be, without terminating his or her membership of the Board.

Remuneration and allowances of members of Board and committees

9. (1) Subject to section 18 of the Public Enterprises Governance Act, a Board or committee member, including a member co-opted under **section 26(3)(b)** must be paid out of the funds of the Authority such allowances or other remuneration for his or her service as Board or committee member, as the Minister may determine.

(2) Allowances or other remuneration determined under subsection (1) may differ according to the different offices held or functions performed by the Board or committee members concerned.

Meetings of Board

10. (1) Meetings of the Board may be held at such date, time and place as the Board may determine, but in any case, not less than once every three months, subject thereto that the Board may in its discretion hold meetings by means of appropriate videoconferencing facilities or similar means..

(2) The chairperson-

(a) may at any time on his or her own initiative;

(b) must, at the written request of the Minister, or of the majority of the members, convene a special meeting of the Board, and in the event of a request referred to in paragraph (b) that special meeting must be held within 21 days after the receipt of the request.

(3) The majority of members constitutes a quorum at a meeting of the Board.

(4) A decision of a majority of the members present and voting at a meeting of the Board constitutes a decision of the Board, and in the event of an equality of votes the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.

(5) Despite subsection (4), a written resolution not passed at a meeting of the Board but signed by all Board members is as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted.

(6) A decision of the Board or an act performed under the authority of the Board is not invalid only by reason of-

(a) a vacancy on the Board; or

(b) the fact that a person not entitled to sit as a Board member was in attendance when the decision was taken or act authorized,

if the decision was taken or act authorised by a majority of the members who were present and entitled to vote at such meeting.

(7) Subject to this Act, the Board may regulate the procedure of its meetings and the meetings of its committees.

Minutes of meetings of Board

11. (1) The Board and its committees must keep minutes of its meetings and submit copies of the minutes to its members within 14 days of a meeting, duly signed by the chairperson presiding at that particular meeting as to the correctness of the content thereof.

(2) The minutes of any meeting of the Board, when signed by a person who presided at the particular meeting, are, in the absence of proof of error therein-

- (a) regarded as a true and correct record of the proceedings; and
- (b) a proof of those proceedings before a court of law, any tribunal or a commission of inquiry.

Conduct of members and disclosure of interests

12. (1) A Board member may not-

- (a) engage in an activity that undermines or has the potential of undermining the integrity of the Board;
- (b) participate in any investigation or decision concerning a matter in respect of which the member has a financial or other personal interest; or
- (c) use any confidential information obtained in the performance of his or her functions as a member to obtain, directly or indirectly, a financial or other advantage for himself or herself or any other person.

(2) A member, as soon as practical after his or her appointment, must in writing disclose to the Minister and the Board any direct or indirect financial or other personal interest which the member has in any business carried on in Namibia or elsewhere and all subsequent changes to such interests.

(3) A Board or committee member, as the case may be who has a direct or indirect interest in any matter-

- (a) pending before the Board or committee; or
- (b) which is likely to conflict with any matter that is regulated by the Authority,

must, as soon as practicable, after the relevant facts have come to his or her knowledge, in writing, disclose to the Board or committee the nature of his or her interest at a meeting of the Board or committee.

(4) A Board or committee member who has an interest to which the disclosure contemplated in subsection (3) relates-

- (a) may not be present during the deliberations or decision on such matter by the Board or committee, or take part in the deliberations or decision on such matter by the Board or committee;
- (b) must withdraw from any further deliberations or decision on such matter by the Board or committee, if he or she was present at a meeting;
- (c) may, despite paragraph (a) and (b), remain in the meeting and participate in the deliberations on the subject matter in respect of which the declaration of interest was made, when the majority of the Board or committee, after assessing the interests so declared, determines that the member need not withdraw from the meeting and this determination must be recorded in the minutes of the meeting.

(5) The chief executive officer or an employee of the Authority may not participate in any meeting or be involved in any decision involving the Authority or the Board in which the chief executive officer or employee or his or her spouse, parent, child or business partner has any direct or indirect conflict of interest, which prevents or is likely to prevent the chief executive officer or employee from performing his or her functions in a fair, unbiased and proper manner.

(6) The chief executive officer must, subject to the approval of the Board, formulate a code of conduct containing acceptable ethical standards and conflict of interest guidelines applicable to the members, including members of a committee, the chief executive officer and

the employees of the Authority, review and if appropriate revise the code of conduct at least once every two years, and submit a copy of that code of conduct and any revisions to the code of conduct to the Board for its review and approval.

Delegation and assignment of powers and functions by Board

13. (1) Subject to this Act, the Board must develop a delegation framework that will maximise its administrative and operational efficiency and provide for adequate checks and balances.

(2) The Board may, in accordance with the framework developed under subsection (1) in writing -

(a) delegate appropriate powers, excluding the power to issue standards or to make rules or other subordinate measures, to an accredited body, a committee, the chief executive officer, an employee or any Board member; or

(b) assign any committee, the chief executive officer, any employee or Board member to perform any of its duties.

(3) Subject to this Act, a delegation or assignment under subsection (2) –

(a) is subject to such limitations and conditions as the Board may impose;

(b) may authorise sub-delegation; and

(c) does not divest the Board of the delegated power or the performance of the assigned duty.

(4) The Board must confirm or may vary or revoke any decision by a committee, the chief executive officer, a Board member or an employee taken on the basis of a delegation or assignment under subsection (2).

PART 3
OBJECTS OF AUTHORITY AND FUNCTIONS AND POWERS OF BOARD

Objects and functions of Authority

14. (1) The objects of the Authority are to-
- (a) to promote the credibility of the accounting and auditing professions in Namibia; and
 - (b) to monitor and adopt international best practice for the development of the accounting and auditing professions.
 - (c) promote adherence to the highest standards of professionalism and integrity in the accounting and auditing professions;
 - (d) ensure that registered persons and accredited bodies serve the public interest and meet the highest standards of quality of services they provide;
 - (e) foster adherence of registered persons to applicable international standards; and
 - (f) ensure that the interests of stakeholders are safeguarded.
- (2) The functions of the Authority are to-
- (a) regulate and supervise registered persons and accredited bodies in order to-
 - (i) promote the provision of high-quality reporting of financial and non-financial information by entities;
 - (ii) promote the adherence of registered persons and accredited bodies to the highest professional standards;
 - (iii) enhance the credibility of financial reporting;

- (iv) promote the quality, integrity, competency and transparency of accounting and auditing services;
 - (v) ensure compliance with and the enforcement of applicable local and international accounting and auditing standards adopted or issued by the Board;
 - (vi) promote the highest standards of compliance with professional ethics; and
 - (vii) encourage effective collaboration with other applicable regulators both nationally and internationally;
- (b) supervise the accounting and auditing professions;
 - (c) advise the Minister in relation to any matter affecting the accounting and auditing professions, whether of its own accord or at the request of the Minister; and
 - (d) do any other thing that has been assigned to the Authority by this Act, or any other applicable law.
- (3) In order to achieve its objects to perform its functions the Authority may-
- (a) call to its assistance such person or persons as it may consider necessary to assist in the performance of its functions;
 - (b) hire, purchase or acquire such moveable or immovable property as the Board may consider necessary for the performance of its functions, and may let, sell or dispose of any property purchased or acquired under this paragraph;

- (c) in order to perform its functions, enter into an agreement with any person for the performance of any specific act or function or the rendering of specific services;
- (d) insure itself against any loss, damage, risk or liability which it may suffer or incur;
- (e) borrow money to a maximum amount approved by the Minister; accept any money or goods donated or bequeathed to it;
- (f) appoint employees to assist it in the performance of its functions;
- (g) establish and administer such systems or schemes as the Board may consider necessary or expedient for the discharge of its functions;
- (h) request for any information or documents which the Authority reasonably requires for the proper exercise of its powers or the performance of its functions under this Act or any other applicable law, from any registered person, or from any other person who is, has been or might be, subject to regulation or supervision by the Authority;
- (i) develop and maintain effective working relationships with Government and with other national, regional and international accounting and auditing bodies; and
- (j) do any other thing necessary to perform its duties and carry out its responsibilities under this Act, or any other applicable law.

General functions and powers of the Board

15. (1) The Board is responsible for the supervision and control of the management of the affairs of the Authority, and it must on behalf of the Authority perform all the functions assigned to, and exercise all the powers conferred on, the Authority or the Board by this Act, or any other applicable law.

- (2) Without derogating from the generality of subsection (1), the Board must-
- (a) comply with any request by the Minister for information relating to the performance of the Authority's functions;
 - (b) on an annual basis establish the objectives of the Authority for the following year;
 - (c) on an annual basis review and approve the overall remuneration structure and other conditions of service of the chief executive officer and senior management staff and other employees of the Authority;
 - (d) prepare, approve and cause the annual financial statements of the Authority to be audited in accordance with **section 36** and submit them to the Minister in terms of **section 37**;
 - (e) prepare an annual report in accordance with **section 37**, which report must be submitted to the Minister in terms of that section;
 - (f)
 - (i) enter into an arrangement or agreement with any other agency or organisation within Namibia; or
 - (ii) with the approval of the Minister, enter into an arrangement or agreement with any other institution or organisation outside Namibia, to obtain or communicate information on matters that are beneficial to the accounting and auditing professions or that has any function related to the regulation or supervision of financial services, taxation, social security or financial systems or any other matter relevant to the objects of the Authority;
 - (g) on its own or in collaboration with accredited bodies or other institutions, design awareness programs on the importance of compliance with accounting and auditing requirements;

- (h) encourage cooperation between the Authority and accredited bodies in matters of common interest;
 - (i) do any other thing that has been assigned to the Authority by this Act and any other applicable law; and
 - (j) do anything which is necessary or expedient to perform its functions or to promote the objects of this Act.
- (3) The Board may-
- (a) prepare and implement strategies to develop the auditing and accounting professions to serve both the private and public sectors of the Namibian economy;
 - (b) prepare and implement strategies to enhance the capacity of small and medium sized practices to operate as competent firms;
 - (c) provide policy direction for the development of the accounting and auditing professions; and
 - (d) initiate and facilitate initiatives for the empowerment, participation and advancement of persons in the accounting and auditing professions who have been socially, racially, economically or educationally disadvantaged by past discriminatory laws or practices.
- (4) The Board must ensure that-
- (a) any function or responsibility under this Act or any other applicable law that is entrusted to or to be performed by the Authority, the Board, any of its committees, the chief executive officer or an employee of the Authority is discharged or performed with honesty, integrity and fairness and within a reasonable period; and

- (b) every member, committee member, the chief executive officer, and each employee of the Authority signs a code of conduct referred to in section 12(6).

Functions of Board with regard to accreditation of professional bodies

16. (1) Subject to this Act, the Board must-

- (a) issue accreditation standards setting out the minimum requirements for accreditation of professional bodies in addition to those provided for in this Act;
- (b) consider and decide on any application for accreditation and grant such accreditation in full or in part;
- (c) set out the period of validity of the accreditation in the standards which may not be less than five years;
- (d) keep and maintain a register of accredited bodies in accordance with **section 51**; and
- (e) where appropriate terminate the accreditation of an accredited body in accordance with this Act.

(2) The Board may in exceptional circumstances intervene in the affairs of an accredited body if the Board is satisfied on reasonable grounds that such intervention is in the best interest of its members under circumstances set out in the standards which intervention may include the power to-

- (a) address a general meeting of members;
- (b) ensure orderly conduct of that meeting;
- (c) impose conditions subject to which the body retains accreditation; or

- (d) monitor the implementation of any imposed conditions.

(3) The Board may only act as contemplated by subsection (2), after giving notice in writing to the accredited body and the reasons therefor and affording the accredited body a period of at least 30 days in which to submit grounds for the Board not to proceed proposed action.

Functions of Board with regard to education, training and professional development

17. (1) The Board—
- (a) must recognise by notice in the *Gazette*-
 - (i) tertiary institutions or accredited bodies that may provide academic and theoretical training for persons seeking to become registered auditors;
 - (ii) accredited bodies that may provide academic and theoretical training for persons seeking to become registered accountants or registered accounting technicians;
 - (b) must after consultation with a tertiary institution or accredited body referred to in paragraph (a), recommend the adoption of any syllabus, educational requirement or examination structure, which in the opinion of the Board, is necessary or desirable to maintain or enhance the professional standard, education, training or professional development of persons seeking to become registered auditors, registered accountants or registered accounting technicians;
 - (c) must issue training standards regarding-
 - (i) qualifying examinations and qualifying examinations assessment criteria that-
 - (aa) trainee auditors must undertake; or

- (bb) accredited bodies must cause trainee accountants or trainee accounting technicians to undertake,
 - to assess their competence for registration under this Act;
 - (ii) the minimum training requirements including the minimum period of training that a trainee auditor, trainee accountant or trainee accounting technician must meet to qualify for registration under this Act;
 - (iii) qualifying examinations, which may include requirements for assessments, portfolio of evidence, and recognition of prior learning as applied by accredited bodies;
 - (iv) the form and content of training contracts;
 - (v) requirements for approval as a training officer;
 - (vi) duties and responsibilities of a training officer; or
 - (vii) any other matter regarding the training of a trainee auditor, trainee accountant or trainee accounting technician that the Board deems necessary.
- (d) may require accredited bodies to cooperate and ensure broad alignment as to the content provided or determined for academic and theoretical training of registered auditors, registered accountants or registered accounting technicians;
- (e) register training contracts entered into by trainee auditors, trainee accountants or trainee accounting technicians, provided that no service under a training contract entered into after the commencement of this Act may be recognized by the Board unless such contract has been registered with the Board and complies with the training standards;

- (f) oversee, monitor and supervise the qualifications and selection of training officers under the training standards;
- (g) review and approve the requirements for, and oversee, monitor and supervise the content, structure and delivery of continuing education, training and professional development programs for registered persons; and
- (h) set, moderate and evaluate examinations referred to in paragraph (c)(i) in the manner determined most practicable by the Board.

(2) No training contract may be registered under subsection (1)(g), unless the training officer responsible under such contract was, in the case-

- (a) of a trainee auditor, approved by the Board; or
- (b) of a trainee accountant or trainee accounting technician, approved by the accredited body responsible for his or her training.

(3) The Board may-

- (a) establish mechanisms for registered auditors, registered accountants or registered accounting technicians to gain recognition of their qualifications and professional status in countries other than Namibia;
- (b) review and approve any agreement between an accredited body and any person or body of persons, within or outside Namibia, pertaining to the recognition of any examination or qualification for the purposes of this Act;
- (c) establish and administer an education fund to be partially funded by fines referred to in **section 87(5)** for the purpose of education, training, professional development and continued education of registered persons or students in the auditing and accounting profession; and

- (d) give advice to, render assistance to, consult with or interact with any public authority, statutory body, educational institution, accredited body or examining body pertaining to educational facilities for and the education, training and professional development of registered persons or students in the auditing and accounting profession.
- (4) The Board may subject to subsection (5) fully or partially-
- (a) withdraw the recognition of any tertiary institution or accredited body referred to in subsection (1)(a); or
 - (b) withdraw the right of any accredited body to conduct examinations referred to in subsection (1)(c)(i)(bb);
 - (c) withdraw the approval of a training officer;
 - (d) recognise an educational qualification, educational program or continued education, training or professional development program for registered persons or students in the auditing and accounting profession; or
 - (e) withdraw the recognition of an educational qualification, educational program or continued education, training or professional development program referred to in paragraph (d).
- (5) The Board must-
- (a) before it withdraws the recognition or approval of any person referred to in subsection (4) give notice in writing to the person concerned of its intention to withdraw such recognition or approval and the reasons on which it is based;
 - (b) afford the person concerned a period of not more than 30 days in which to submit grounds for not proceeding with the withdrawal; and

(c) before it withdraws recognition of an educational qualification, educational program or continued education, training or professional development program referred to in subsection (4)(d), be satisfied on reasonable grounds such educational qualification, educational program or continued education, training or professional development program is not suitable for the training requirements of registered persons or students in the auditing and accounting profession.

(6) If the Board after considering any submissions referred to in subsection (5)(b) is satisfied on reasonable grounds that-

(a) the withdrawal of recognition of any person referred to in that subsection would not be in the best interests of the public, the auditing and accounting professions or the members of an accredited body, the Board may continue to recognise the person concerned on such conditions as the Board considers appropriate;

(b) there is no basis upon which to continue recognising the person concerned, the Board must withdraw such recognition or approval and inform the person accordingly.

(7) The Board must publish in the manner it deems most appropriate –

(a) the names of every tertiary institution recognised, or accredited body accredited, under this Act; and

(b) the withdrawal of any recognition or approval referred to in subsection (4).

Functions of Board with regard to registration of auditors, accountants, accounting technicians and firms

18. Subject to this Act, the Board-

- (a) may issue competency standards and requirements for registration of auditors, accountants or accounting technicians in addition to those provided for in this Act;
- (b) must consider and decide on any application for registration in accordance with **Part 8**;
- (c) must in accordance with **section 55** keep and maintain a register of the different categories of registered persons; and
- (d) may cancel or suspend the registration of registered persons in accordance with **Part 9**.

Functions of Board with regard to professional standards and compliance monitoring

- 19.** (1) The Board must –
- (a) in accordance with this Act, issue accounting and auditing standards, which standards must, as far as is possible and practicable conform to international standards;
 - (b) periodically review accounting and auditing standards and subject to subsection (2) adopt international standards applicable to the accounting and auditing professions in Namibia;
 - (c) periodically assess the methods and procedures applied by registered persons in carrying out their public practice;
 - (d) monitor compliance with accounting and auditing standards;
 - (e) develop adequate technical resources to guide registered persons to implement international standards;

- (f) set out guidelines and rules in the standards to govern quality assurance programs, including actions necessary to rectify deviations from accounting and auditing standards;
- (g) conduct or arrange periodic practice reviews under **Part 11** in the form and manner set out in the standards;
- (h) issue auditing pronouncements; and
- (i) solicit and submit comments on draft international standards and other pronouncements of international bodies, and otherwise meaningfully contribute to their standard-setting activities.

(2) For purposes of this Act, the Board adopts international standards by incorporating them by reference into an accounting or auditing standard, as the case may be.

(3) Any international standard incorporated as contemplated in subsection (2) may incorporate such standard partly or in full and may incorporate it with such amendments as are indicated in the accounting or auditing standards.

(4) International standards incorporated as contemplated in subsection (2), will form part of the accounting or auditing standards concerned.

(5) Accounting or auditing standards incorporating international standards as contemplated in section (2) must only mention the international body that issued the international standard concerned and identify the international standard with the name or number given by the international body concerned in the accounting or auditing standards.

(6) The Authority must avail copies of all international standards adopted in terms of this section to any person in electronic format during the hours determined by the Authority on the payment of the prescribed fees.

Functions of Board with regard to discipline

- 20.** The Board must-
- (a) in accordance with **section 74(1)(a)** publish in the *Gazette* and periodically review a code of professional conduct and ethics for registered persons, which must be consistent with and contain applicable international standards;
 - (b) in accordance with the disciplinary rules establish investigation, disciplinary and enforcement procedures in respect of registered persons and accredited bodies;
 - (c) refer any disciplinary proceedings against a registered accountant or registered accounting technician to the relevant accredited body;
 - (d) subject to Part 12, conduct investigations into any allegations of unprofessional conduct against a registered person or relating to a complaint against an accredited body;
 - (e) impose sanctions specified or prescribed under this Act; or
 - (f) refer matters which require enforcement action to the investigation and enforcement committee.

Functions with regard to fees and charges

- 21.** (1) The Minister must after consultation with the Board prescribe-
- (a) differentiated fees for accreditation, registration and the issue of certificates to practise, considering the size, complexity and risk presented by different registered persons;
 - (b) the annual fee referred to in **section 58**, or a portion thereof in respect of a part of a year;

- (c) fees payable for a practice review undertaken by or under the direction or control of the inspection and quality assurance committee under Part 1; and
- (c) the date on which any fee is payable.
- (2) The Minister may prescribe –
 - (a) any fees payable for the purposes of the education fund referred to in **section 17(3)(c)**; and
 - (b) fees payable for any other service rendered by the Board.
- (3) The Board may on good cause shown grant exemption from the payment of any fees referred to in subsection (1) or (2).

PART 4 STAFF OF AUTHORITY

Chief executive officer

- 22.** (1) The Board must with the concurrence of the Minister, and subject to section 17 of the Public Enterprises Governance Act, and **section 6** appoint a suitable person-
- (a) to be the chief executive officer of the Authority;
 - (b) who has qualifications, knowledge and expertise directly relevant to the administration and functions of the Authority; and
 - (c) who must be of high moral character and proven integrity.
- (2) The chief executive officer is appointed-
- (a) for a term of five years, and is eligible for reappointment at the expiry of that term; and

- (b) on such terms and conditions as the Board may determine-
 - (i) with due regard to any directives contemplated in section 4 of the Public Enterprises Governance Act; and
 - (ii) with the concurrence of the Minister.

(3) The Board must enter into a performance agreement with the chief executive officer as soon as he or she accepts appointment to the position of chief executive officer.

(4) Where the chief executive officer is absent from office or when a vacancy for the post of the chief executive officer occurs, the powers and functions of the chief executive officer may be exercised and performed by-

- (a) any suitable employee of the Authority; or
- (b) any other suitable person,

appointed in writing by the Board, and it does not matter whether the appointment has been made before or after the absence or vacancy occurred.

(5) The chief executive officer is in the full-time employment of the Authority and may not engage in any other occupation or employment, whether for remuneration or not, without the prior written approval of the Board.

Functions of chief executive officer

23. (1) The chief executive officer is the accounting officer of the Authority responsible for the day-to-day operations and administration of the Authority.

(2) Subject to this Act and to the general supervision and control of the Board, the chief executive officer is responsible for ensuring-

- (a) the implementation of the decisions, policies and programs of the Authority;
 - (b) the proper management of the funds and property of the Authority;
 - (c) the organisation and control of the staff of the Authority;
 - (d) the development of an economic, efficient and cost-effective internal management structure;
 - (e) proposing and implementing the strategic plan, business plan and annual plan of the Authority;
 - (f) performing any other duty necessary for the implementation of this Act as may be assigned to him or her by the Board.
- (3) The chief executive officer has administrative powers and functions-
- (a) to ensure that the Authority employs persons qualified to carry out the provisions of this Act, and provide adequate training for such employees;
 - (b) subject to **section 24**, to appoint and dismiss the staff of the Authority;
 - (c) to organize, control and maintain staff discipline;
 - (d) to form and develop an efficient and effective system of administration as the chief executive officer considers necessary for the operational effectiveness of the Authority, including, without limiting the generality of the foregoing, establishing bank accounts, arranging for premises, purchasing materials, obtaining information technology and other services;
 - (e) to effectively deploy and utilize staff to achieve maximum operational results;
 - (f) to sign contracts with the approval of the Board; and

(g) to submit to the Board for its approval, at least three months before the start of a financial year or another period agreed to between the Board and the chief executive officer, the estimated revenue and expenditure for such financial year.

(4) The chief executive officer must for every quarter in each year submit to the Board a report on his or her performance-

(a) in the execution of the functions of the Authority; and

(b) in the implementation of the decisions, programs and policies of the Authority, representing fairly the financial state of affairs and business of the Authority.

(5) The chief executive officer is an *ex officio* member of the Board but is not entitled to vote.

Other officers and employees of Authority

24. (1) The chief executive officer, with the prior approval of the Board may appoint other officers and employees of the Authority as may be necessary for the proper and efficient performance of the functions of the Authority.

(2) The officers and employees appointed under this section hold office on such terms and conditions as may be determined by the Board and specified in their employment contracts.

(3) The chief executive officer must after consultation with the Board enter into the performance agreement contemplated in section 21 of the Public Enterprises Governance Act with members of the senior management of the Authority.

(4) The chief executive officer must regulate the manner of appointment, terms and conditions of service and the discipline of the officers and employees appointed under this section.

Consultants

25. The Board may engage consultants as may be required to properly administer the provisions of this Act, subject to confidentiality requirements determined by the Board.

PART 5 COMMITTEES

Establishment of committees

26. (1) The Board may establish any number of committees to-
- (a) advise the Board in the exercise of its powers and performance of its functions;
and
 - (b) subject to this Act, exercise or perform any power or function that the Board may delegate or assign to such committee,

subject to committee charters issued by the Board setting out the mandate, detailed membership, functions and powers of committees.

(2) Notwithstanding the generality of subsection (1), the Board must establish the following permanent committees-

- (a) education, training and professional development committee;
- (b) registration and accreditation committee;
- (c) standards committee;
- (d) inspection and quality assurance committee;
- (e) ethics committee;

(f) investigation and enforcement committee; and

(g) disciplinary committee.

(3) Every accredited body must have the following permanent committees:

(a) an inspection and quality assurance committee;

(b) an investigation and enforcement committee; and

(c) a disciplinary committee.

(4) The disciplinary rules must specify the requirements for the appointment, composition and functions of committees referred to in subsection (3).

(5) A committee established under subsection (1) or (2)-

(a) must, subject to sections 32(3), 33(3) and 33(4) consist of at least one Board member and such other person or persons as the Board may determine, with experience and skills relevant to the purpose for which the committee is established;

(b) may, with the approval of the Board, co-opt persons of special expertise to advise it in the performance of its functions, but such co-opted person is not entitled to vote at any meeting of that committee; and

(c) must perform the functions and has the duties stipulated in this Act.

(6) Subject to subsection (7) and section 33(2), the Board must designate a suitably qualified member as chairperson of the committee, provided that a member may only hold the chairpersonship of one committee and the chairperson of the investigation and enforcement committee may not be a Board member.

(7) If no member is available to be the chairperson of a committee as required by subsection (6), or because a member does not possess the requisite knowledge and experience, the Board may appoint a person who is not a Board member to be the chairperson of that committee.

(8) The members of a committee referred to in this section hold office for a period of three years on such terms and conditions as the Board may determine.

(9) The Board must, when appointing persons to committees, consider, among other factors, the skill and experience of the persons to be appointed, the demographics of the Namibian population, including gender representation.

(10) The Board may terminate the membership of a committee member if, after giving the member a reasonable opportunity to be heard, it is satisfied that-

- (a) the member is disqualified under **section 6**;
- (b) the performance by the member of the powers and functions of that committee is unsatisfactory;
- (c) the member has without the leave of the chairperson of the committee, been absent from three consecutive meetings of the committee;
- (d) the member, either through illness or for any other reason, is unable to perform the functions of the committee effectively; or
- (e) the member has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.

(11) If a committee member dies or his or her office becomes vacant because an event referred to in subsection (10) occurred, the Board must as soon as possible thereafter appoint a person to fill the vacancy for the term set out in subsection (8).

(12) The Board must ensure that its committees have funding available which is necessary to enable the committees to perform their functions effectively.

(13) Subject to any direction given by the Board and the committee charters referred to in **section 26(1)**, a committee appointed under this section may regulate its own procedure.

(14) Any reference in this Act to the Board concerning the exercise of any power or function which the Board has assigned to a committee must be construed as including a reference to that committee.

(15) The inspection and quality assurance committee, investigation and enforcement committee and disciplinary committee of the Board or of an accredited body must perform their functions independently from the Board, the Authority or an accredited body and no person may interfere with or hinder such committees of the Board or of an accredited body in the performance of their functions.

(16) A person who contravenes or fails to comply with subsection (15) commits an offence and is liable on conviction to a fine not exceeding N\$1 000,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Education, training and professional development committee

27. In addition to the functions set out by the committee charters referred to in **section 26(1)** and this Act, the education, training and professional development committee must assist the Board to perform all its functions related to the education, training, practical experience requirements and continuing professional development of registered persons, including trainee auditors, trainee accountants and trainee accounting technicians.

Registration and accreditation committee

28. In addition to the functions set out by the committee charters referred to in **section 26(1)** and this Act, the registration and accreditation committee must assist the Board to perform all its functions related to the registration of auditors, accountants, accounting technicians and firms under **Part 8** and the accreditation of professional bodies.

Ethics committee

29. In addition to the functions set out by the committee charters referred to in **section 26(1)** and this Act, the ethics committee must assist the Board-

- (a) to determine what constitutes unprofessional conduct by registered persons by developing or adopting a code of professional conduct in accordance with **section 74(1)(a)**;
- (b) to consider and approve the code of ethics and disciplinary rules that every accredited body must issue in respect of its members;
- (c) to engage with accredited bodies and any other body or organ of state with an interest in the accounting or auditing profession on any matter relating to the committee's functions and powers; and
- (d) to provide advice to accredited bodies, registered persons including trainee auditors, trainee accountants and trainee accounting technicians on matters of professional ethics and conduct.

Standards committee

30. In addition to the functions set out by the committee charters referred to in **section 26(1)** and this Act, the standards committee must assist the Board-

- (a) to develop, amend or improve accounting and auditing standards and to make appropriate recommendations to the Board on the standards;
- (b) to determine which international standards the Board must adopt;
- (c) to develop, amend, improve or adopt accounting and auditing pronouncements;

- (d) to consider relevant changes to international standards and provide advice and recommendations to the Board regarding such changes; and
- (e) to promote and ensure the relevance of auditing pronouncements by-
 - (i) considering the needs of users of audit reports;
 - (ii) liaising with other committees on standards to be maintained by registered persons and considering feedback from such committees on areas where auditing pronouncements are needed;
 - (iii) ensuring the greatest possible consistency between auditing pronouncements and accepted international auditing pronouncements; and
 - (iv) consulting with accredited bodies on the direction and appropriateness of auditing pronouncements.

Inspection and quality assurance committee

31. In addition to the functions set out by the committee charters referred to in **section 26(1)** and this Act, the inspection and quality assurance committee must –

- (a) supervise periodic practice reviews or on-site inspections pertaining to registered auditors or accredited bodies;
- (b) determine, when conducting or supervising a practice review or on-site inspection, whether-
 - (i) a registered auditor has complied with the code of professional conduct issued under **section 74(1)(a)** and any applicable accounting or auditing standards, as required under this Act; or

- (ii) an accredited body complies with this Act; and
- (c) recommend to the investigation and enforcement committee that an investigation be conducted in respect of a registered auditor, trainee auditor or accredited body, which contravenes this Act.

Investigation and enforcement committee

32. (1) In addition to the functions set out by the committee charters referred to in **section 26(1)** and this Act, the disciplinary rules, the investigation and enforcement committee must investigate allegations or complaints involving registered auditors or trainee auditors or accredited bodies.

(2) The investigation and enforcement committee is in accordance with the disciplinary rules responsible for the enforcement of all decisions of the disciplinary committee and of compliance with the provisions of this Act relating to registered auditors or accredited bodies and their duties and functions.

(3) The Board must appoint persons suitably qualified in areas of law, accounting and law enforcement to be members of the investigation and enforcement committee, provided that no member may be a registered person or member of an accredited body, but a former registered person who has not been in private practice for at least three years may be appointed to the disciplinary committee.

Disciplinary committee

33. (1) In addition to the functions set out by the committee charters referred to in **section 26(1)**, this Act, and the disciplinary rules the disciplinary committee must consider any findings and recommendations referred to it by the Board whether of the Board's own accord or upon the recommendation of any of its committees and take the appropriate action stipulated by this Act or those rules.

(2) The disciplinary committee must be chaired by a retired judge or a legal practitioner of not less than 10 years' experience gained after admission as a legal practitioner.

(3) The Board must, in addition to the chairperson of the disciplinary committee appoint two persons suitably qualified and experienced in areas of law and accounting to be members of the disciplinary committee, provided that no member may be a registered person or member of an accredited body, but a former registered person who has not been in public practice for at least three years may be appointed to the disciplinary committee.

(4) No Board member may be a member of the disciplinary committee.

PART 6 FINANCES OF AUTHORITY

Funds of Authority

- 34.** (1) The funds of the Authority consist of –
- (a) money standing to the credit of the Authority having accrued to the Authority under the repealed Act;
 - (b) money appropriated by Parliament to achieve the objects of this Act;
 - (c) fees prescribed under this Act;
 - (d) donations or grants made for the benefit of the Authority;
 - (e) interest derived from investments made under subsection (5);
 - (f) money received as loans or grants with the prior approval of the Minister;
 - (g) any fine paid to the Authority under **section 83(1)(h)**; and
 - (h) all other moneys received or made available for the benefit of the Authority.

(2) The Authority must manage its funds in accordance with sound principles of financial management to protect the liquidity and solvency of the Authority.

(3) The Authority must use its funds for the purpose of defraying expenses incurred in connection with the administration and implementation of the provisions of this Act.

(4) All moneys received under this Act for the benefit of the Authority must be paid into the bank account referred to in **section 35**.

(5) The Authority-

(a) must invest any unexpended portion of its moneys; and

(b) may make provision for reserves and for that purpose set aside any moneys it considers necessary.

(6) An unexpended balance at the end of a financial year of the Authority is carried forward as a credit to the next financial year.

Bank account of Authority

35. (1) The Authority must open an account with an institution registered as a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998) or a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 2 of 1986), and must deposit into that account all moneys referred to in **section 34(1)**, but the Authority may continue to use any account opened by it in terms of the repealed Act.

(2) The chief executive officer must ensure that-

(a) all money received by or on behalf of the Authority is deposited into its bank account as soon as practicable after being received; and

- (b) money is not withdrawn, paid or transferred from its bank account unless provided for in the Authority's approved budget or with the approval of the Board.

Financial year, accounting and auditing of Authority

- 36.** (1) The financial year of the Authority ends on 31 December of every year.
- (2) At least three months before the commencement of each financial year of the Authority, the chief executive officer must prepare and submit to the Board for approval,
- (a) a budget in respect of the next ensuing financial year that sets forth the estimated income and expenditures of the Authority and the sums which are likely to be required by the Authority from the Government during the next ensuing financial year;
 - (b) a business plan and the Authority's strategy and activity program.
- (3) The chief executive officer must during each financial year cause records of account to be kept in accordance with an accepted form of the International Financial Reporting Standards.
- (4) The Board must-
- (a) from the records of account referred to in subsection (3) prepare or cause to be prepared the annual financial statements of the Authority; and
 - (b) cause the annual financial statements to be audited annually by the Auditor-General.
- (5) The Auditor-General must within six months after the end of the financial year of the Authority, audit its annual financial statements.
- (6) The audited financial statements of the Authority must-

- (a) contain detailed particulars of moneys received by the Authority and expenditure incurred by the Authority during, and its assets and liabilities at the end of, the financial year in question;
- (b) fairly present the results of operations and the financial position of the Authority; and
- (c) contain such other additional matters as the Minister may direct.

Reports to and meetings with Minister

37. (1) The Board must, in accordance with section 22 of the Public Enterprises Governance Act, submit to the Minister in respect of each financial year of the Authority but not later than six months after the end of the financial year, the audited financial statements referred to in **section 36(6)** together with a report of the auditor, and the annual report referred to in **section 15(2)(e)**.

(2) The chairperson of the Board must from time to time submit to the Minister reports in regard to matters relating to the activities of the Authority which in the opinion of the Board should be brought to the notice of the Minister.

(3) The Board must, at the request of the Minister furnish him or her with advice, reports or information on matters in connection with the objects of this Act or the activities of the Authority.

(4) The Minister must at least biannually meet with the Board concerning the activities of the Authority and issues relating to the accounting and auditing professions.

(5) The annual financial statements and reports submitted to the Minister in terms of subsection (1), must be laid before the National Assembly in accordance with section 22(3) of the Public Enterprises Governance Act.

(6) The Board must after the annual financial statements and annual report referred to in subsection (2) were submitted to the Minister publish those statements and report on the Authority's official website and notify all registered persons thereof.

PART 7

ACCREDITATION OF PROFESSIONAL BODIES

Application for accreditation

38. (1) A professional body (in this Part referred to as “an applicant”) seeking accreditation must, on the application form set out in the standards, apply to the Authority for accreditation.

(2) If the Board is satisfied that an applicant complies with the requirements referred to in section 39, it must grant the application on payment of the prescribed fee.

(3) An accredited body must be entered on the relevant register for accredited bodies in accordance with **section 55**.

Accreditation requirements

- 39.** To qualify for accreditation, the Board must be satisfied that the applicant-
- (a) complies with the requirements set out in the standards for the education, training and professional development, and the achievement of professional competence by its members;
 - (b) has appropriate mechanisms to ensure that its members participate in continuing professional development as recognised or set out in the standards;
 - (c) has or will issue a code of ethics and disciplinary rules approved by the Board to determine what constitutes unprofessional conduct by its members;

- (d) in respect of an applicant whose members consist or will consist of registered accountants or registered accounting technicians, that its code of ethics and disciplinary rules has mechanisms to investigate and discipline its members for unprofessional conduct;
- (e) is likely to be financially and operationally viable for the foreseeable future;
- (f) will have a register of its members in the form set out in the standards;
- (g) has in place appropriate programs and structures to ensure that it is actively endeavouring to achieve the objective of being representative of all sectors of the Namibian population; and
- (h) will be able to meet any other requirement set out in the standards.

Retaining accreditation

40. In order to retain its accreditation, an accredited body must at the expiry of every five-year period commencing on the date of its first accreditation in the form and manner set out in the standards, satisfy the Board that the accredited body continues to comply with the general requirements for accreditation referred to in **section 39** and with any other requirements stipulated under this Act.

Cancellation of accreditation

41. (1) The accreditation of an accredited body lapses automatically if that body ceases to exist or if it fails to pay any prescribed fee or portion thereof within the period set out in the standards.

(2) Subject to subsection (3), the Board must cancel the accreditation of an accredited body-

- (a) for failure to comply with the general requirements for accreditation referred to in **section 39**;

- (b) if an order to that effect is made by the disciplinary committee under **section 87(1)(f)**; or
 - (c) if the Board is satisfied upon application for cancellation by the accredited body that it ceased operations or will cease operations and that it has given its members at least 12 months' notice of its intention to apply for cancellation of accreditation.
- (3) The Board must prior to cancelling the accreditation of an accredited body under subsection (2)(a) -
- (a) give notice in writing to the accredited body of its intention to cancel its accreditation and the reasons therefor; and
 - (b) afford the accredited body a period of not more than 30 days in which to submit grounds for the Board not to proceed with the cancellation.
- (4) The Board may, pending the outcome of the process contemplated in subsection (3), suspend the accreditation of an accredited body if the Board is satisfied on reasonable grounds that such suspension will be in the best interests of the public or the accounting and auditing professions.
- (5) If the Board considers that the cancellation of accreditation of an accredited body would not be in the best interests of the public, the accounting and auditing professions or the members of the accredited body the Board may extend the accreditation of that body on such conditions as the Board considers appropriate.
- (6) If an accredited body's accreditation is suspended or cancelled, the Board may make such alternative arrangements as it considers necessary to accommodate the members of the accredited body during the period of suspension or the cancellation, if those members do not become members of another accredited body.

(7) Upon cancellation of the accreditation of an accredited body, the Board must publish a notice informing all its members-

- (a) of the cancellation of its accreditation; and
- (b) that under **section 42** the members have the duty to provide the Board with written proof that they have become members of another accredited body.

(8) The Board must publish the cancellation of the accreditation of an accredited body by notice in the *Gazette*.

(9) An accredited body which is no longer accredited is not relieved of any outstanding financial obligation towards the Authority.

Effect of cancellation of accreditation

42. (1) The cancellation of accreditation of an accredited body does not affect the registration of any of its members under this Act.

(2) A member referred to in subsection (1) must, within six months of the cancellation of the accreditation of the accredited body concerned or within a further period not exceeding six months that the Board may on reasonable grounds allow, provide written proof to the satisfaction of the Board that the member concerned has become a member of another accredited body or that the member together with other members are in the process of forming a body that will apply for accreditation under **section 38** within a period of 12 months.

(3) If the member concerned fails to comply with the requirements of subsection (2), the Board may, subject to subsection (4), cancel that person's registration.

- (4) The Board must, prior to the cancellation of the registration of such member-
 - (a) give notice in writing to the member of the Board's intention to cancel the member's registration and the reasons therefor; and

- (b) afford the member a period of not more than 30 days in which to submit grounds for not proceeding with such cancellation.

(5) Notwithstanding subsection (4), if there is no accredited body which a member referred to in subsection (1) may join, the Board may temporarily perform the functions of an accredited body subject to such conditions and for such period as may be set out in the standards, in which event any reference to an accredited body in this Act must be construed as a reference to the Board.

PART 8 REGISTRATION REQUIREMENTS

Interpretation

43. In this Part-

“applicant” means an individual that applies for registration under this Part;

“member in good standing” means a member of an accredited body or similar body in a foreign country who-

- (a) does not owe any membership fees or other dues to that accredited body or similar body;
- (b) is not subject to a disciplinary proceeding by the Authority or by that accredited body or similar body; and
- (c) complies with the continuing professional development standards set out in the standards.

Registration of individual as trainee accountant or trainee accounting technician

44. (1) An applicant for registration as a trainee accountant or trainee accounting technician must-

- (a) apply to an accredited body in the form, and containing the information, set out in the standards; and
 - (b) pay the prescribed fee for such application.
- (2) If the accredited body is satisfied that the applicant-
- (a) is ordinarily resident in Namibia;
 - (b) possesses the academic qualifications or otherwise meet the entry requirements set out by the training standards;
 - (c) subject to **section 17(2)(b)**, will enter into a training contract with a training officer; and
 - (d) complies with any other requirements set out by the training standards,

the accredited body must, subject to **section 52(1)** give written approval in the form set out in the standards for the applicant to commence with his or her training under the training contract.

Registration of individual as accounting technician

- 45.** (1) An applicant for registration as an accounting technician must-
- (a) apply to the Authority in the form, and containing the information, set out in the standards; and
 - (b) pay the prescribed fee for such application.
- (2) If after consideration of an application referred to in subsection (1), the Board is satisfied that the applicant-
- (a) is ordinarily resident in Namibia;

- (b) has passed the final professional examinations of an accredited body or otherwise meets the requirements for membership of such ;
- (c) has satisfactorily completed training under a training contract;
- (d) is a member in good standing of an accredited body;
- (e) is in possession of a certificate of compliance with the requirements for continued professional development of such; and
- (f) complies in all respects with the training standards,

the Board must, subject to **section 52(1)** register the applicant as a registered accounting technician, issue to him or her a certificate to practise in accordance with **section 53** and enter his or her name in the applicable register referred to in **section 55**.

Registration of individual as accountant

46. (1) An applicant for registration as an accountant must-

- (a) apply to the Authority in the form, and containing the information, set out in the standards; and
- (b) pay the prescribed fee for such application.

(2) If after consideration of an application referred to in subsection (1), the Board is satisfied that the applicant-

- (a) is ordinarily resident in Namibia;
- (b) has passed the final professional examinations of an accredited body or otherwise meets the requirements for membership of such ;

- (c) has satisfactorily completed training under a training contract;
- (d) is a member in good standing of an accredited body;
- (e) is in possession of a certificate of compliance with the requirements for continued professional development of such ; and
- (f) complies in all respects with the training standards,

the Board must, subject to **section 52(1)** register the applicant as a registered accountant, issue to him or her a certificate to practise in accordance with **section 53** and enter his or her name in the applicable register referred to in **section 55**.

Registration of individual as trainee auditor

47. (1) An applicant for registration as a trainee auditor must-

- (a) apply to the Authority in the form, and containing the information, set out in the standards;
- (b) pay the prescribed fee for the application.

(2) If after consideration of an application referred to in subsection (1), the Board is satisfied that the applicant-

- (a) is ordinarily resident in Namibia;
- (b) is in possession of the educational qualifications set out by the training standards;
- (c) complies with the requirements set out by the training standards,

the Board must, subject to **section 52(1)** give written approval in the form set out in the standards to the applicant to commence with his or her training under the training contract.

Registration of individual as auditor

48. (1) An applicant for registration as an auditor must-

- (a) apply to the Authority in the form, and containing the information, set out in the standards;
- (b) pay the prescribed fee for the application.

(2) If after consideration of an application referred to in subsection (1), the Board is satisfied that the applicant-

- (a) is ordinarily resident in Namibia;
- (b) complies with the training standards;
- (c) is a member in good standing of an accredited body;
- (d) has passed the final professional examinations set by the accredited body of whom he or she is a member; and
- (e) is in possession of a certificate of compliance with the requirements for continued professional development issued by the Board,

the Board must, subject to **section 52(1)** register the applicant as a registered auditor, issue to him or her a certificate to practise in accordance with **section 53** and enter his or her name in the applicable register referred to in **section 55**.

Registration of individual who practised in foreign country as auditor, accountant or accounting technician

49. (1) An applicant who has been practising in a foreign country as-

- (a) an auditor,
- (b) an accountant; or
- (c) an accounting technician,

who was duly registered as such with a registering authority similar to the Authority and who seeks to be registered as an auditor, an accountant, or an accounting technician, as the case may be, must-

- (d) apply to the Authority in the form, and containing the information, set out in the standards;
- (e) pay the prescribed fee for the application.

(2) If after consideration of an application referred to in subsection (1), the Board is satisfied that the applicant-

- (a) is ordinarily resident in Namibia;
- (b) is a member in good standing of an organised body of auditors, accountants or accounting technicians in a foreign country;
- (c) is in possession of a certificate to practise or similar entitlement issued by a registering authority similar to the Authority in the foreign country entitling him or her to practise as an auditor, an accountant or an accounting technician as the case may be in that country;
- (d) is a member of an accredited body where the application relates to the registration of an accountant or accounting technician; and
- (e) is in possession of a certificate of good standing from the body referred to in paragraph (b) or the registering authority referred to in paragraph (c), which is not older than one year from the date of issue,

the Board must, subject to **section 52(1)** register the applicant as a registered auditor, registered accountant, or registered accounting technician, as the case may be, and issue to him or her a certificate to practise in accordance with **section 53** and enter his or her name in the applicable register referred to in **section 55**.

(3) The Board may, prior to registering an applicant as an auditor, an accountant or an accounting technician, require the person to complete examinations, undergo practical training or be subjected to interviews that the Board deems appropriate

Registration of firm other than company

50. (1) A firm that seeks to be registered must-

- (a) apply to the Authority in the form, and containing the information, set out in the standards; and
- (b) pay the prescribed fee for the application.

(2) A partnership or close corporation may be registered as a firm with a certificate to practice as an audit firm if all the partners or members are registered auditors.

(3) A partnership or close corporation of which the partners or members comprise a combination of registered auditors, registered accountants or registered accounting technicians may be registered as a firm, subject thereto that an auditor may not perform any audit as part of such partnership or close corporation.

(4) If the Board is satisfied that the owner of a sole proprietorship, each partner in a partnership or member of a close corporation is a registered auditor, registered accountant or registered accounting technician, as the case may be, the Board must subject to **section 52(2)** register the firm and issue to such firm a certificate to practice as an audit firm, an accounting services firm or a firm of accounting technicians in accordance with **section 53** and enter the firm's name in the applicable register referred to in **section 55**.

Registration of company

51. (1) The Board must on application in the form, and containing the information, set out by the standards, which is accompanied by the prescribed fee, register a company subject to **section 52(2)** as a firm of auditors or a firm of accountants and issue to that firm a certificate to practice as an audit firm or accounting services firm, as the case may be, in accordance with **section 53** and enter the firm's name in the applicable register referred to in **section 55**, if-

- (a) that company is incorporated and registered as a private company under the Companies Act with a share capital, and its memorandum of association provides that all present and past directors of the company are jointly and severally liable with the company for the debts and liabilities of the company contracted during their periods of office;
- (b) only natural persons who are registered auditors in the case of a company carrying on the audit profession, or registered accountants and registered auditors, in the case of a company carrying on the accounting profession are-
 - (i) members or shareholders of the company; or
 - (ii) persons having an interest in the shares of the company;

(2) Every shareholder of the company must be a director of the company, and no person other than a shareholder of the company may be a director thereof.

(3) If a shareholder of the company or a person having an interest in the shares of the company, dies or ceases to conform to the requirements of subsection (1)(b)(i) or (ii), is disqualified under **section 52**, or his or her registration is cancelled under **section 59**, he or she or his or her estate, as the case may be, may continue, as from the date on which he or she dies, ceases to so conform, is disqualified or his or her registration is cancelled, to hold the relevant shares or interest in the shares in the company for a period of six months or for such longer period as the Board may approve.

(4) No voting rights may attach to any share held under subsection (3), and the holder of any such share may not act as a director of the company or receive, directly or indirectly, any director's fees or remuneration or participate in the income of or profits earned by the company in its public practice.

(5) If the articles of association of the company so provide, the company may, without confirmation by a court but by special resolution, upon such conditions as it may deem expedient, purchase any shares held in it, and the authorised share capital of the company may not be reduced thereby.

(6) Shares purchased under subsection (5) must be available for allotment in terms of the articles of association of the company.

(7) Notwithstanding anything to the contrary contained in any other law, the articles of association of the company may restrict a member of the company to only appoint another member of the company to attend, speak or vote in his or her stead at any meeting of the company.

(8) Subject to subsection (9), if the company ceases to conform to any of the requirements of subsection (1), it must forthwith cease to practise, and must, as from the date on which it ceases to so conform, not be recognised in law as a registered firm of auditors or accountants.

(9) Subsection (8) does not, during the period contemplated in subsection (3), apply to a company by reason only that a shareholder of the company or a person having an interest in the shares of the company has ceased to be a registered auditor or registered accountant.

(10) Any reference in this Act or in any other law to a registered auditor or registered accountant or to a partner or partnership in relation to registered auditors or registered accountants, must be construed as including a reference to a company contemplated in this section or to a member of such a company, as the case may be, unless the context otherwise indicates.

(11) The words “and associates” or “and company” may be included in the name of the company.

Disqualifications for registration

52. (1) No individual may be registered under this Part as a trainee accounting technician, trainee accountant, trainee auditor, registered accounting technician, registered accountant or registered auditor, as the case may be, if he or she-

- (a) has at any time been removed from an office of trust;
- (b) is disqualified as a director under the Companies Act;
- (c) has at any time been convicted of theft, fraud, forgery or uttering a forged document or perjury;
- (d) has under any law in Namibia or a foreign country been declared to be of unsound mind or under legal disability;
- (e) is disqualified for registration in terms of a punishment imposed under this Act;
- (f) is an unrehabilitated insolvent;
- (g) has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been discharged, rescinded or set aside; or
- (h) has been guilty of unprofessional conduct by reason whereof he or she is in the opinion of the Board not a fit person to be registered.

(2) A firm which is not a sole proprietorship may not be registered under this Part if that firm-

- (a) is disqualified for registration in terms of a punishment imposed under this Act;
or
- (b) has been declared insolvent or bankrupt in terms of a law in force in any country;
or
- (c) made an assignment to or arrangement or composition with its creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been discharged, rescinded or set aside;
- (d) has been guilty of unprofessional conduct by reason whereof it is in the opinion of the Board not fit to be registered; or
- (e) has partners, directors or members which are disqualified under subsection (1).

(3) Before reaching a decision as to whether or not a person is disqualified for registration under subsections (1) or (2), the Board must-

- (a) inform the person in writing of the grounds on which the Board might reach such a decision and afford the person concerned a period of not more than 30 days in which to submit grounds for not proceeding with the withdrawal; and
- (b) pay due regard to any representations made by the person under paragraph (a).

Certificate to practise

53. (1) A certificate to practise must be issued in the form and manner and subject to the terms and conditions set out in the standards.

(2) A certificate to practise must contain the membership number of the registered person and identify the accredited body of the registered person.

(3) If, following any disciplinary action against a registered person, conditions are imposed upon his, her or its entitlement to practise, the registered person must forthwith return

the certificate to practise held by that person to the Authority, which must endorse the conditions on the certificate.

(4) A certificate to practise is valid for a prescribed period and may be renewed on application in the form and manner set out in the standards.

Prohibition on holding out or practising as registered person

54. (1) A registered person may not engage in public practice directly or indirectly except in accordance with the terms and conditions of a certificate to practise issued by the Authority under this Part.

(2) A person who is not registered as contemplated in subsection (1) may not-

- (a) offer accounting or auditing services in public practice;
- (b) hold himself, herself or itself out to be a registered person;
- (c) do anything that is likely to cause members of the public to infer that the person concerned is a registered person; or
- (d) use the designation or initials referred to in **section 57** or any other name, title, description or letters indicating that the person concerned is a registered person, whether by advertisement or description or in any document.

(3) A person who is not a member of, or registered with an accredited professional body may not:

- (a) hold himself, herself, or itself out to be registered with or a member of that accredited professional body;
- (b) do anything that is likely to cause members of the public to infer that he, she or it is registered with or a member of that accredited professional body;

- (c) use designations, initials, or any other name, title, description, or letters indicating that he, she or it is registered with or a member of that accredited professional body, whether by advertisement or description or in any document.

(4) A person who contravenes or fails to comply with subsection (1), (2) or (3), commits an offence and is liable on a first conviction to a fine not exceeding N\$ 1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment, and on a subsequent conviction for any such contravention or failure to comply, to a fine not exceeding N\$2 000 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

- (5) Subsection (1), (2) or (3) does not prevent a person who-

- (a) is employed exclusively as a salaried employee and does not carry on public practice, from describing himself or herself as an accountant or internal auditor in relation to the undertaking in which the person is employed; or
- (b) without receiving any fee or reward, prepares or reports on the accounts of a club, society, institute or other association not established for the acquisition of gain, from describing himself or herself as an honorary auditor in relation to the preparation of or reporting on such accounts.

- (5) Subsection (1), (2) or (3) does not apply-

- (a) to a person in the employment of a registered person in respect of anything done in the course of such employment while under the direction and control of a registered person.
- (b) to any person in the employment of the State, the Auditor-General, a statutory body, a regional council or local authority in respect of anything done by him or her in the course of such employment; or
- (c) to a person who gratuitously and not in anticipation of reward applies his or her skills for the private benefit of friends, family or a voluntary organisation.

Register of registered persons and accredited bodies

55. (1) The Authority must keep in the manner and form determined by the Board a-

- (a) register of registered auditors;
- (b) register of registered accountants;
- (c) register of registered accounting technicians;
- (d) register of firms;
- (e) register of accredited bodies; and
- (f) any other register, by whatever name the Board may designate, containing particulars determined by the Board.

(2) The Authority must maintain each of the registers referred to in subsection (1) and must record in the relevant register-

- (a) the name of every registered person or accredited body, as the case may be;
- (b) the date when-
 - (i) a certificate to practise has been issued to a registered person; or
 - (ii) a professional body has been accredited;
- (c) particulars of the cancellation or suspension of the registration of a registered person or of the accreditation of a professional body;

- (d) restoration of the name of a registered person whose registration was cancelled or the termination of a suspension of registered person;
- (e) any necessary corrections or alterations to any particulars or facts referred to in paragraph (a), (b), (c) or (d);
- (f) any other particulars set out in the standards or that the Board may determine.

(3) The registers are open to inspection during office hours to any member of the public upon payment of the prescribed fee.

(4) The Authority may, from time to time, prepare and publish in such form or manner as it may determine, a current list of the names and particulars of all registered persons.

(5) A copy of, or any document purporting to be an extract from any of the registers, signed by the chief executive officer or his or her delegate, is proof in all legal proceedings of the facts recorded therein until the contrary is proven.

(6) The absence of the name of a person from a copy of a register referred to in subsection (1) is proof that the person concerned is not registered under this Act until the contrary is proven.

Duty to report change in particulars

56. (1) A registered person must, whenever there is any change in name or any relevant particulars as recorded in the relevant register, notify the Authority of such change within 30 days thereof in such manner as the Authority may require.

(2) A registered person who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$ 100 000.

Use of certain designations

57. (1) A registered auditor is entitled to use the designation “Registered Auditor (Namibia)” or the initials “R.A. (Nam)”.

(2) A registered accountant is entitled to use the designation “Registered Accountant (Namibia)” or the initials “R.Acc.(Nam)”.

(3) A registered accounting technician is entitled to use the designation “Registered Accounting Technician (Namibia)” or the initials “R.A.Tech. (Nam)”.

(4) This section does not preclude the member of an accredited body from using that body’s designation in addition to the designations referred to in subsections (2) and (3).

(5) The Board may change the designation of any person referred to in subsections (1), (2) and (3) by notice in the *Gazette*.

Annual fee

58. (1) A registered person must pay an annual fee prescribed by the Minister.

(2) The Minister may prescribe different amounts for different categories of registered persons in respect of the annual fee.

PART 9

CANCELLATION OR SUSPENSION OF REGISTRATION OF REGISTERED PERSON

Suspension or cancellation of registration

59. (1) The Board may suspend or cancel the registration of a registered person, where –

(a) that person becomes subject to any disqualification referred to in **section 52**;

(b) the person’s certificate to practise is not renewed under **section 53(3)**;

- (c) the person has obtained registration by fraud or misrepresentation;
 - (d) the registration was made in error;
 - (e) the person fails to pay the annual fee referred to in **section 58** within three months after the date of a written demand by or on behalf of the chief executive officer, addressed to the person's postal address as entered in the relevant register;
 - (f) in the case of a natural person, he or she -
 - (i) has been suspended or dismissed as a member of an accredited body;
 - (ii) otherwise ceases to be a member of an accredited body and does not within six months of such cessation provide written proof to the satisfaction of the Board that he or she has made arrangements to become a member of another accredited body or has made arrangements for his or her continuing professional development.
 - (g) the person is convicted of unprofessional conduct under this Act and the Board determines that the registration should be cancelled;
 - (h) the person has requested in writing that his or her registration be cancelled and no disciplinary proceedings under **Part 12** is pending or contemplated, subject thereto that such cancellation does not affect any liability incurred by the registered person prior to the date of the cancellation.
- (2) Prior to cancelling or suspending the registration of a person under subsection (1)(a) to (g), the Board must-
- (a) give notice in writing to the person of its intention to cancel or suspend such registration and the reasons therefor; and

- (b) afford the person a period of not less than 21 days and not more than 30 days to make representations to the Board not to proceed with such cancellation or suspension, as the case may be.
- (3) The registration of a firm automatically lapses if the firm no longer complies with **section 50** or **section 51**, as the case may be.
- (4) The cancellation or suspension of the registration of a registered person does not prevent the Board from instituting disciplinary proceedings against such person for unprofessional conduct committed prior to such cancellation or suspension.
- (5) As soon as is practical after the registration of a registered person is cancelled, the Board must-
 - (a) inform the person concerned by means of a written notice addressed to the postal address of the person as entered in the relevant register;
 - (b) direct the person to return the person's certificate to practise within 30 days of the date of the notice referred to in paragraph (a) to the Board;
 - (c) remove the person from the relevant register; and
 - (d) publish a notice of cancellation in the *Gazette*, specifying the name of the registered person and that person's membership number.
- (6) Upon receipt of a registered person's certificate to practise to the Board under subsection (5)(b), the Board must endorse the word "cancelled" thereon.
- (7) A registered person may not knowingly employ any person whose registration is suspended or cancelled under this section.

No practise during period of suspension

60. (1) A registered person may not engage in public practice during any period in respect of which the registered person is suspended under **section 59(1)**.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on a first conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 12 months or to both such fine and imprisonment, and on any subsequent conviction for any such contravention or failure to comply, to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Restoration of name to register

61. (1) Where the name of a registered auditor, registered accountant or registered accounting technician has been removed from the relevant register on the grounds referred to in **section 59(1)(f)(i) or (ii)** and the accredited body concerned informs the Board that such auditor, accountant or accounting technician has had his or her membership of such accredited body restored, the Board must cause the restoration of that person's name to the relevant register and publish a notice of restoration in the *Gazette*.

(2) Where the name of a person has been removed from the relevant register, or the registration has been suspended on any ground other than the grounds referred to in subsection (1), the Board may, either of its own volition, or on an application in the form, and containing the information set out by the standards, accompanied by the prescribed fee and after holding an inquiry that the Board may consider necessary, direct that the name of the person be restored to the register or the suspension be lifted, as the case may be.

PART 10

SPECIFIC PROVISIONS RELATING TO AUDITING SERVICES

Rules relating to conduct of an audit

62. (1) A registered auditor may not-

- (a) sign any audit opinion, account, statement, report or other document which purports to represent an audit performed by that auditor, unless the audit was performed in accordance with the auditing standards -
 - (i) by that auditor;
 - (ii) under the personal supervision or direction of that auditor; or
 - (iii) by or under the personal supervision or directions of that auditor and one or more of the partners, co-members or co-directors of the auditor, as the case may be.
- (b) perform audits unless the registered auditor has adequate risk management practices and procedures in place which comply with relevant international standards on risk management;
- (c) engage in public practice during any period in respect of which the auditor is suspended from public practice; or
- (d) share any profit derived from performing an audit with a person that is not a registered auditor.

(2) Subsection (1)(a) does not apply in respect of an audit performed by another registered auditor in a partially completed assignment which a previously registered auditor was unable to complete as a result of death, disability or other unforeseen cause not under the control of that previously registered auditor, and which assignment the successor registered auditor is engaged to complete, provided that the successor registered auditor must be from the same firm as the previously registered auditor.

(3) Nothing in subsection (1)(a) prevents a registered auditor from signing the firm name or title under which that auditor practises, provided that the audit report in respect of an entity must contain the name of the registered auditor who performed the audit.

(4) In order to engage in public practice, a registered auditor must have paid all applicable prescribed fees.

Duties in relation to audit

63. (1) Where a firm is appointed by an entity to perform an audit, that firm must forthwith assign one or more registered auditors within the firm to be responsible and accountable for that audit.

(2) The first name and surname of every registered auditor referred to in subsection (1) must be made available to the entity when the firm has made the assignment and to the Authority upon its request.

(3) A registered auditor may not, without such qualifications as may be appropriate in the circumstances, express an opinion to the effect that any financial statement or any supplementary information attached thereto which relates to the entity to be audited-

- (a) fairly presents in all material respects the financial position of the entity and the results of its operations and cash flow; and
- (b) are properly prepared in all material aspects in accordance with the basis of the accounting and financial reporting framework as disclosed in the relevant financial statements,

unless such auditor is satisfied that the criteria specified in subsection (4) are met.

(4) The criteria referred to in subsection (3) are that-

- (a) the registered auditor has carried out the audit free from any restrictions whatsoever and in compliance, so far as applicable, with auditing pronouncements relating to the conduct of the audit;
- (b) the registered auditor has by means of such methods as are reasonably appropriate having regard to the nature of the entity, satisfied himself or herself

that the financial statements present fairly in all material respects the financial position, performance and cash flows of an entity;

- (c) proper accounting records have been kept in connection with the entity so as to reflect and detail all its transactions and record all its assets and liabilities correctly and adequately;
- (d) the registered auditor has obtained all information, vouchers and other documents which in his or her opinion were necessary for the proper performance of his or her duties;
- (e) there was no necessity for the registered auditor, in the course of the audit or otherwise during the period to which the auditing services relate, to send a report to the Authority concerning a reportable irregularity under **section 64** or, if such a report was so sent, the auditor has been able, prior to expressing the opinion referred to in subsection (3), to send to the Authority a notification under **section 64** that the auditor has become satisfied that no reportable irregularity has taken place or is taking place; and
- (f) the registered auditor has complied with all laws relating to the audit of that entity.

(5) If a registered auditor or, where the registered auditor is a member of a firm, any other member of that firm, was responsible for keeping the accounting records of an entity, the registered auditor concerned must, in reporting on anything in connection with the business or financial affairs of the entity, indicate that he or she or another member of the firm was responsible for keeping those accounting records.

(6) For the purpose of subsection (5), a registered auditor is not regarded as being responsible for keeping the accounting records of an entity by reason only of that auditor-

- (a) making closing entries;
- (b) assisting with any adjusting entries; or

(c) framing any financial statements or other document from existing records.

(7) A registered auditor may not conduct the audit of any financial statements of an entity, whether as an individual or as a member of a firm, if, that auditor has or had a conflict of interest in respect of that entity, which has not been resolved to the satisfaction of the Board.

(8) A registered auditor, in addition to the duties specified in this section, must in the performance of his or her duties as a registered auditor, comply with any other applicable auditing standards.

(9) An audit firm or a registered auditor is restricted in the manner provided in the standards from providing non-audit services to entities that are subject to a statutory audit.

Duty to report on irregularities

64. (1) A registered auditor responsible for, and accountable for the audit of an entity, who is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that entity must, without delay, send a written report to the Authority, which report must give particulars of the reportable irregularity and such other information and particulars as the registered auditor considers appropriate.

(2) The registered auditor must, within five days of sending the report to the Authority, send a written notice, accompanied by a copy of the report sent to the Authority, to the members of the management board of the entity informing them that he or she has sent the report to the Authority.

(3) The registered auditor must, as soon as reasonably possible but no later than 30 days from the date on which the report referred to in subsection (1) was sent to the Authority-

(a) take all reasonable measures to discuss the report with the members of the management board of the entity;

- (b) afford the members of the management board of the entity an opportunity to make representations in respect of the report; and
- (c) send another report to the Authority, which report must include a statement that the registered auditor is of the opinion that-
 - (i) no reportable irregularity has occurred or is occurring;
 - (ii) the suspected reportable irregularity is no longer occurring-
 - (aa) and adequate steps were taken for the prevention or recovery of any loss as a result thereof, if relevant; or
 - (bb) but it is not clear if adequate steps were taken for the prevention or recovery of any loss as a result thereof, if relevant; or
 - (iii) the reportable irregularity is continuing.

(4) The registered auditor must in the report referred to in subsection (3)(c), include detailed particulars and information supporting the statements included in that report.

(5) The Authority must within three working days after receipt of a report containing a statement that a reportable irregularity is continuing, in writing notify any appropriate regulator of the entity concerned of the details of the reportable irregularity to which the report relates and provide the regulator with a copy of the report.

(6) Notwithstanding subsection (5) if the Board is satisfied on reasonable grounds upon receipt of a report referred to in subsection (1) that any delay in notifying an appropriate regulator of the entity concerned of the details of a reportable irregularity may cause serious financial harm to the entity concerned, the Board must as soon as possible after receipt of that report in writing notify that regulator of the details of the reportable irregularity to which the report relates and provide the regulator with a copy of the report.

(7) For the purpose of the reports referred to in subsections (1) and (3), a registered auditor may carry out such investigations as he or she may consider necessary and, in performing any duty referred to in the preceding provisions of this section, that auditor must have regard to all the information which comes to his or her knowledge from any source.

(8) Where any entity is sequestrated or liquidated, whether provisionally or finally, and a registered auditor responsible for, and accountable for the audit of that entity at the time of the sequestration or liquidation has sent or is about to send a report referred to in subsection (1) or (3), the report must also be submitted to a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, at the same time as the report is sent to the Authority or as soon as reasonably possible after his or her appointment.

(9) Where a registered auditor has not sent a report contemplated in subsection (7), and is requested by a provisional trustee or trustee, or a provisional liquidator or liquidator, as the case may be, to send a report, the auditor must-

- (a) as soon as reasonably possible send the report; and
- (b) give reasons as to why a report was not sent; or
- (c) submit a declaration that in his or her opinion, no report is required to be submitted, together with a justification for such declaration.

(10) A registered auditor who reports a reportable irregularity under this section is not personally liable for the act of reporting the irregularity.

(11) Notwithstanding the provisions of this section, if a registered auditor is appointed by the Auditor-General to perform an audit in respect of an organ of State, such appointment does not result in a responsibility for that registered auditor to report a reportable irregularity to the Authority.

(12) A registered auditor referred to in subsection (11) must report a reportable irregularity to the Auditor-General.

(13) If an organ of State appoints a registered auditor including a firm to perform its audit, the registered auditor who performs the audit must comply with the provisions of this section.

(14) A registered auditor who in the course of performing an audit in respect of an entity made a reportable irregularity to the Authority in terms of this section—

- (a) may not resign from performing the audit; and
- (b) the entity concerned may not terminate the services of the registered auditor until subsection (3) has been fully complied with.

Limitation of liability of registered auditor

65. (1) The application of this section is limited to an audit performed in respect of financial statements with the objective of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements.

(2) For purposes of this section, “registered auditor” includes both the firm appointed by an entity to perform an audit and the registered auditor assigned by that firm to be responsible for the audit of an entity (in this section referred to as a “client”).

(3) In respect of any opinion expressed or report or statement made by a registered auditor in the ordinary course of duties, that auditor does not incur any liability to a client or any third party, unless it is proved that the opinion was expressed, or the report or statement was made maliciously, fraudulently or pursuant to a negligent performance of the auditor’s duties.

(4) Despite subsection (3), a registered auditor incurs liability to a client or a third party (in this section referred to as the “claimant”) who relied on an opinion, report or statement of that auditor for financial loss suffered as a result of having relied thereon, if it is proved that the opinion was expressed, or the report or statement was made, pursuant to a negligent performance of the registered auditor’s duties: Provided that:

- (a) Where a claimant suffers damage, which is caused partly by the fault of the claimant and partly by the fault of the registered auditor, a claim in respect of that damage is not defeated by reason of the fault of the claimant but the damages recoverable in respect thereof must be reduced by the court hearing the claim to such extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.
- (b) Damage must for the purpose of paragraph (a) be regarded as having been caused by a person's fault notwithstanding the fact that another person had an opportunity of avoiding the consequences thereof and negligently failed to do so.

(5) Where in any case to which the proviso to subsection (4) applies, one or more registered auditors at fault avoid liability to any claimant by pleading and proving that the time within which proceedings should have been instituted or notice should have been given in connection with such proceedings in terms of any law, has been exceeded, such auditor or auditors may not by virtue of the provisions of the said subsection, be entitled to recover damages from that claimant.

(6) For the purposes of this section "fault" includes any act or omission which would, but for the provisions of this section, have given rise to the defence of contributory negligence.

(7) Subject to the proviso to subsection (4) and subsection (6), a registered auditor incurs liability to a claimant under subsection (4) if that auditor-

- (a) knew, or could in the particular circumstances reasonably have been expected to know, at the time when the negligence occurred in the performance of the duties pursuant to which the opinion was expressed or the report or statement was made-
 - (i) that the opinion, report or statement would be used by a client to induce a third party to act or refrain from acting in some way or to enter into the

specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or

(ii) that the claimant would rely on the opinion, report or statement for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the claimant entered, or any other transaction of a similar nature, with any other person; or

(b) in any way represented, at any time after the opinion was expressed or the report or statement was made, to the claimant that the opinion, report or statement was correct, while at that time the auditor knew or could in the particular circumstances reasonably have been expected to know that the claimant would rely on that representation for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the claimant entered, or any other transaction of a similar nature, with the client or any other person.

(8) Nothing in subsections (3) or (4) confers upon any person a right of action against a registered auditor which, but for the provisions of those subsections, the person would not have had.

(9) For the purposes of subsection (7), the fact that a registered auditor performed any audit is not in itself proof that the registered auditor could reasonably have been expected to know that-

(a) the client would act as contemplated in subsection (7)(a)(i); or

(b) the claimant would act as contemplated in subsection (7)(a)(ii) or subsection (7)(b).

(10) Subsections (3) or (4) do not affect any additional or other liability of a registered auditor arising from a contract between a third party and the registered auditor or any other statutory provision.

(11) A registered auditor may incur liability to any partner, member, shareholder, creditor or investor of an entity if that auditor negligently fails to report a reportable irregularity in accordance with **section 64**.

(12) A registered auditor may not through an agreement or in any other way limit or reduce the liability that such auditor may incur under this section.

PART 11 PRACTICE REVIEWS AND INSPECTIONS

Practice reviews

- 66.** (1) Prior to the end of its financial year-
- (a) the Board in respect of registered auditors and accredited bodies;
 - (b) an accredited body in respect of its members,

must formulate a practice review program setting out a schedule of periodic practice reviews to be performed during the ensuing financial year.

(2) The practice review program referred to in subsection (1) must be provided to the persons referred to in subsection (1)(a) and (b) in the manner determined by the Board.

- (3) The inspection and quality assurance committee established under-
- (a) **section 26(2)(d)** is responsible for the administration of the practice review program in respect of registered auditors and accredited bodies; and
 - (b) **section 26(3)(b)** is responsible for the administration of the practice review program in respect of the members of the accredited body concerned.

(4) The Board, or the accredited body, as the case may be, may by notice in writing request information and returns from the person subject to the practice review and that person

must submit to the Board or the accredited body such information or returns within the period specified in the notice.

(5) The inspection and quality assurance committee of the Board or an accredited body, as the case may be, or any inspector appointed by the Board or an accredited body under **section 68(1)** may-

- (a) conduct an off-site or on-site review of the affairs of the person subject to the practice review;
- (b) during business hours, enter any premises or part of any premises used or intended to be used by the person subject to the practice review after giving the registered person or accredited body notice of intention to conduct a practice review within the period stipulated by the standards;
- (c) examine, extract information from and make copies of all records, documents and other relevant information required to carry out the practice review, whether kept electronically, in hard copy or in an internet-based storage facility;
- (d) request records, documents or other relevant information from, or interview-
 - (i) an individual employed or otherwise in the service of the person subject to the practice review;
 - (ii) the sole proprietor, partners, officers or directors of the person subject to the practice review or that employs or uses the services of the person subject to the practice review; or
 - (iii) any person employed by a person referred to in subparagraph (i) or (ii);
and
 - (iv) summon in the form and manner specified by the standards any person who is or was a director, employee, partner or shareholder of the registered person or accredited body and whom the inspection and

quality assurance committee or inspector, or accredited body believes is in possession of or has under his or her control, any document relating to the affairs of the person subject to the practice review, to lodge such document with the inspection and quality assurance committee, inspector, or accredited body as the case may be or to appear at a time and place specified in the summons to be examined or to produce such document and to examine or, against the issue of a receipt, to retain any such document for as long as it may be required for purposes of the practice review or any legal or regulatory proceedings.

(6) The inspection and quality assurance committee and every accredited body must, in the form and manner required by the Board prior to end of each financial year of the Authority, provide to the Board an annual report about the practice review program referred to in subsection (1), containing the information specified by the Board.

Inspections

- 67.** (1) Subject to subsection (2)-
- (a) the inspection and quality assurance committee with the concurrence of the Board may direct an inspector or a forensic inspector appointed under **section 68** to conduct an on-site inspection of the affairs of a registered auditor or an accredited body;
- (b) the inspection and quality assurance committee of an accredited body, with the concurrence of entity responsible for the governance of that body, may direct an inspector or a forensic inspector appointed under **section 68** to conduct an on-site inspection of the affairs of a member of that accredited body.
- (2) An on-site inspection referred to in subsection (1)(a) or (2)(b) may be conducted if-
- (a) the Board in respect of a registered auditor or an accredited body; or

(b) an accredited body in respect of any of its members,

on reasonable grounds believes that such registered auditor or accredited body, or such member is contravening this Act or any other law.

(3) Subject to subsection (4), an inspection and quality assurance committee referred to in subsection (1) must provide the person subject to the inspection a notice of intention to conduct an on-site inspection within the period stipulated by the standards.

(4) An inspection and quality assurance committee referred to in subsection (1) may act or cause an inspector or a forensic inspector to act under **section 69** without giving notice under subsection (3) if the inspection and quality assurance committee on reasonable grounds believes that giving notice is likely to materially prejudice an inspection.

(5) A registered person or an accredited body that acts in good faith during an on-site inspection and who produces information under **section 69** or **70** may not be held criminally liable or under civil law because of the production of the information.

(6) The Board or an accredited body, as the case may be, may recover the costs of an on-site inspection under this section from the person subject to the inspection.

Appointment of inspectors and forensic inspectors

68. (1) The Board or an accredited body concerned may appoint-

(a) one or more persons as inspectors for the purposes of this Part;

(b) a person who has expert knowledge in a particular field to be a forensic inspector to investigate any contravention of this Act or any other law, specified-

(i) in the instrument appointing the forensic inspector; or

- (ii) in a written notice given to the forensic inspector by the Board or an accredited body.

(2) An inspector or a forensic inspector must perform his or her functions subject to the control and direction of the inspection and quality assurance committee -

- (a) of the Board in the case of an inspection of a registered auditor or accredited body; and
- (b) of an accredited body in the manner determined by the standards, in the case of an inspection of one of its members,

on the terms and conditions as the Board or the accredited body and the inspector or forensic inspector may agree.

(3) An inspector or a forensic inspector appointed under subsection (1) must upon appointment be issued with a certificate of appointment in the form set out in the standards.

(4) When an inspector or forensic inspector exercises any power or performs any duty under this Act, he or she must be in possession of the certificate of appointment issued under subsection (3) and must produce the certificate of appointment at the request of any person in respect of whom such power is being exercised.

Powers of inspector or forensic inspector

69. (1) This section, in so far as it provides for a limitation on the fundamental rights contemplated in article 13(1) of the Namibian Constitution by authorising interference with the privacy of any person's premises, correspondence or communication, is enacted upon the authority conferred by that article.

(2) An inspector or a forensic inspector (hereafter individually or collectively called the "inspection authority") has the powers of a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.

(3) An inspection authority may, if authorised by a warrant or if acting in pursuance of subsection (11)-

- (a) enter and search any premises and any person on those premises if there are reasonable grounds for believing that there is an article or record therein that has a bearing on the investigation;
- (b) examine any such article or record that is in those premises;
- (c) request any person on the premises to unlock or otherwise provide unhindered access to any safe, storage facility or other receptacle on the premises, or to point out any other person on the premises who can do so;
- (d) request information about any article, document or record that has a bearing on the investigation;
- (e) take extracts from, or make copies of, any book, computer, mobile device, internet-based storage facility, document or record that is on or in the premises or under control of a person on the premises and that has a bearing on the investigation;
- (f) use any computer system, mobile device or internet-based storage facility on the premises or under control of a person on the premises that has a bearing on the investigation, or require assistance of any person on the premises to use that computer system, mobile device or internet-based storage facility, to-
 - (i) search any data contained in or available on that computer system; or
 - (ii) reproduce any record from that data;
- (g) seize any output from that computer, mobile device or internet-based storage facility for examination and copying;

- (h) attach and if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation;
- (i) seize and retain any book, record or other document that may afford evidence of sanctionable conduct under this Act: Provided that the person from whom the book, record or other document was taken must, at his or her request and at his or her expense, be allowed to make copies thereof or extracts therefrom, under the supervision of an inspection authority concerned; and
- (j) summon any person in the form and manner and for the purpose contemplated in **section 66(5)(d)(iv)**.

(4) The warrant contemplated in subsection (3) must be issued by a judge or a magistrate if it appears from the information given by a member of an inspection and quality assurance committee referred to in **section 67(1)** or an inspection authority under oath or affirmation that-

- (a) there are reasonable grounds for suspecting that an inspection referred to in **section 67** is necessary;
- (b) a search of the premises is likely to yield information pertaining to the inspection; and
- (c) the search is reasonably necessary for the purposes of such inspection.

(5) The warrant must identify the premises that may be entered and searched and specify the parameters within which an inspection authority may perform an entry, search or seizure.

- (6) The warrant is valid only until-
 - (a) the warrant is executed;

- (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- (c) the purpose of issuing it has lapsed; or
- (d) the expiry of one month after the date it was issued,

whichever occurs first.

(7) The warrant may be executed only during the hours of 07h00 and 19h00 of a day other than a Saturday, Sunday or public holiday, unless the judge or the magistrate who issued it authorises that it may be executed at any other time that is reasonable in the circumstances.

(8) Immediately before commencing with the execution of a warrant, an inspection authority executing that warrant must-

- (a) if the owner or person in control of the premises to be searched is present-
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand exact copies of the warrant and of this section to that person or to the person named in it; or
- (b) if no person is present, affix an exact copy of the warrant at the entrance to the premises in a prominent and visible place.

(11) An inspection authority may conduct an on-site inspection without a warrant contemplated in subsection (3), if-

- (a) the inspector or forensic inspector has provided his or her identity to the owner or person in control of the premises and has explained to the owner or person the purpose of the entry and search; and

- (b) the owner or any other person in control of the premises consents to the entry and search of the premises; or
- (c) an inspection and quality assurance committee referred to in subsection (1) on reasonable grounds believes that-
 - (i) a search of the premises is likely to yield information that has a bearing on an inspection;
 - (ii) a warrant would be issued under **subsection (4)** if applied for;
 - (iii) the delay in obtaining a warrant would defeat the object of the entry and search; and
- (d) an inspection and quality assurance committee referred to in subsection (1) must act urgently to secure information that has a bearing on an investigation and an inspector or forensic inspector is unable to urgently obtain a warrant under subsection (4).

(12) Despite subsection (11), an inspection authority may conduct a search of and enter premises or part of premises that are a home or are being used as a home only if authorised to do so by a warrant issued under subsection (4).

(13) An inspection authority conducting an entry and search in terms of a warrant issued in terms of subsection (4) or in pursuance of subsection (11), may be accompanied and assisted by one or more members of the Namibian Police Force.

(14) An inspection authority and any member of the Namibian Police Force accompanying an inspection authority must, when entering and searching any premises under this section, conduct that entry and search with strict regard to decency and every person's right to dignity, freedom, security and privacy.

(15) During any search, only a female inspection authority or female member of the Namibian Police Force may search a female person and only a male inspection authority or male member of the Namibian Police Force may search a male person.

(16) An inspection authority who removes anything from premises being searched must-

- (a) issue a written receipt for it to the owner of or person in control of the premises in sufficient detail to identify each specific thing so removed; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed to the person from whose control it was taken, unless it is to be used as evidence in any subsequent proceedings, in which case an inspection authority must forthwith in writing inform the person from whose control it was taken of that fact.

(17) During a search conducted under this section, a person may refuse to permit the removal of an article, document or record on the grounds that it contains privileged, protected or confidential information, but that person may not cause such article, document or record to be amended, altered or destroyed until an inspection authority has been afforded a reasonable time to act under subsection (16).

(18) If the owner or person in control of an article or document refuses to give the article, document or record to an inspection authority conducting the search, that inspection authority or a member of an inspection and quality assurance committee referred to in subsection 67(1) may in writing request the registrar or deputy sheriff of the High Court that has jurisdiction to attach and remove the article, document or record for safe custody until a court determines whether the information is privileged or protected.

(19) A member of the Namibian Police Force who is assisting an inspection authority in terms of this section may use as much force as is necessary, including breaking a door or window of the premises, or the breaking of any lock which prevents the search of any safe, storage facility or other receptacle on the premises, to overcome resistance by any person to the entry and search.

(20) Before using force, a police officer must audibly demand admission or access and must announce the purpose of entry, unless it is reasonable to believe that doing so may induce someone to destroy, dispose of or conceal an article, document or record that forms part of the search or is otherwise relevant to the search.

(21) For the purpose of this section, “premises” include any building or structure, or part thereof, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.

Duties of person subject to practice review or inspection

70. (1) A person subject to a practice review under **section 66** or an inspection under **section 67** must-

- (a) on notice contemplated by **section 67(3)** and during business hours, permit entry of the inspection authority;
- (b) comply with any duty under **section 66** or cooperate with an inspection authority acting as contemplated in **section 67**; and
- (c) provide all records, documents or information available to that person as requested by the inspection authority in connection with the practice review or inspection.

(2) Where the person subject to the inspection fails to comply with subsection (1) without reasonable cause, the inspection and quality assurance committee of the Board or the accredited body must report the failure to comply respectively to the Board or accredited body concerned.

(3) Any failure to comply with subsection (1) may be considered unprofessional conduct in the case of a registered person or non-compliance with this Act in the case of an accredited body.

Practice review or inspection report

71. (1) On completion of a practice review or an inspection, the inspection authority must, within a reasonable time, prepare a written report containing-

- (a) the findings of the practice review or inspection; and
- (b) any recommendations to ensure that the person subject to the practice review or inspection conducts public practice or its business in accordance with this Act or any other applicable law.

(2) An inspector or forensic inspector must provide the report referred to in subsection (1) to the inspection and quality assurance committee of the Board or an accredited body, as the case may be, within the period determined by such committee.

(3) The inspection and quality assurance committee of the Board or an accredited body must serve in the manner set out in the standards a copy of the report prepared under subsection (1) or provided under subsection (2) on the person subject to the practice review or inspection or his or her employer, if any, provided that if the inspection and quality assurance committee on reasonable grounds believes that the person subject to the practice review or the inspection is guilty of an offence, that committee may after consultation with the Board or the entity responsible for the governance of the accredited body refer the matter to the appropriate authority to investigate whether a crime has been committed.

(4) The person subject to the practice review or inspection may, within 30 days after receiving a copy of the report referred to in subsection (3), make written submissions to the inspection and quality assurance committee concerned regarding the findings and recommendations, if any, in the report.

(5) The inspection and quality assurance committee of the Board or an accredited body, as the case may be, must consider any written submissions made under subsection (4) and make appropriate changes to the report referred to in subsection (3), if in the opinion of the inspection and quality assurance committee concerned such changes are justified.

(6) The inspection and quality assurance committee of the Board or an accredited body, as the case may be, must within the period specified by the standards provide the report referred to in subsection (3), annotated with any changes made under subsection (5) together with any submissions referred to in subsection (4) to the Board or the accredited body concerned.

Powers of Board or accredited body pertaining to practice review or inspection report

72. (1) After considering the findings and recommendations, if any, in a report referred to in **section 71(6)**, and any submissions of the person subject to the practice review or inspection made under **section 71(4)**, the Board or an accredited body may do one or more of the following:

- (a) consider the practice review or inspection completed and inform the person subject to the practice review or inspection accordingly without delay;
- (b) direct the investigation and enforcement committee of the Board or of the accredited person to monitor any action the person subject to the practice review or the inspection has agreed to take in response to the findings and recommendations in the report concerned;
- (c) order the registered person or accredited body to report back to the investigation and enforcement committee, in writing, within the time period specified in the order, on any action the registered person or accredited body has agreed to take in response to the findings and recommendations in the report concerned, and consider the matter further once that person's report has been received or the time for making the report has expired;
- (d) order the registered person or accredited body to take any steps or to refrain from performing or continuing to perform any act, within the time period specified in the order, to ensure that the registered person or accredited body remedy any irregularity or state of affairs disclosed by the practice review or inspection;

- (e) refer any matter arising from the practice review or inspection that, in the opinion of the inspection and quality assurance committee, should be dealt with as a complaint or violation of this Act to the Board to be dealt with under Part 12; or
- (f) refer the matter to the appropriate authority to investigate whether a crime has been committed.

(2) An accredited body who conducted a practice review or an inspection in respect of one of its members has the powers referred to in subsection (1) with the changes necessitated by the context, subject to any provisions of the standards regarding the mechanisms and the manner in which those powers should be exercised.

- (3) For purposes of this Part-
 - (a) “registered auditor”, includes a firm which was issued with a certificate to practice as an audit firm in terms of **section 50 or 51**;
 - (b) “registered accountant” includes a firm which was issued with a certificate to practice as an accounting services firm in terms of **section 50 or 51**;
 - (c) “registered accounting technician” includes a firm which was issued with a certificate to practice as a firm of accounting technicians in terms of **section 50**.

PART 12

DISCIPLINARY POWERS OF BOARD AND ACCREDITED BODY

Interpretation

- 73.** (1) In this Part, unless the context indicates otherwise-

“accounting services firm” means a firm which was issued with a certificate to practice as an accounting services firm in terms of **section 50 or 51**, as the case may be;

“audit firm” means a firm which was issued with a certificate to practice as an audit firm in terms of **section 50 or 51**, as the case may be;

“complainant in relation to an accredited body” means any person who made a complaint to an accredited body;

“complainant” means any person who made a complaint to the Board and includes the Board where it acts under **section 78(3)**;

“complaint” means a complaint made or initiated under **section 78**;

“conduct” includes an act or an omission;

“disciplinary committee of an accredited body” means the disciplinary committee established under **section 26(3)(c)**;

“disciplinary committee” means the disciplinary committee established under **section 26(2)(g)**;

“ethics committee” means the ethics committee established under **section 26(2)(e)**;

“firm of accounting technicians” means a firm which was issued with a certificate to practice as a firm of accounting technicians in terms of **section 50**.

“formerly registered person” means a person whose registration has ceased under this Act;

“investigation and enforcement committee of an accredited body” means the investigation and enforcement committee established under **section 26(3)(b)**;

“investigation and enforcement committee” means the investigation and enforcement committee of the Board established under **section 26(2)(f)**;

“investigator of an accredited body” means a person appointed by an accredited body to investigate a complaint against a respondent in relation to an accredited body;

“investigator” means a person appointed by the Authority to investigate a complaint against a respondent; or

“respondent in relation to an accredited body” means a registered accountant, registered accounting technician, trainee accountant, trainee accounting technician, a formerly registered person who was a registered accountant or a registered accounting technician, an accounting services firm or a firm of accounting technicians;

“respondent” means a registered auditor, trainee auditor, formerly registered person who was a registered auditor, an audit firm, an accredited body;

(2) For purpose of this Part, whenever a person who made a complaint is a complainant in relation to an accredited body, or the complaint is initiated by an accredited body, any reference to-

- (a) the Board or the Authority, must be construed as referring to an accredited body, except for the purposes of **section 78(2)**;
- (b) a complainant, must be construed as referring to a complainant that is a complainant in relation to an accredited body;
- (c) the disciplinary committee, must be construed as referring to a disciplinary committee of an accredited body, except for the purposes of **section 78(2)**;
- (d) the investigation and enforcement committee, must be construed as referring to the investigation and enforcement committee of an accredited body, except for the purposes of **section 78(2)**;
- (e) an investigator, must be construed as referring to the investigator of an accredited body; and
- (f) a respondent, must be construed as referring to a respondent in relation to an accredited body, except for the purposes of **section 78(2)**.

Code of conduct and disciplinary rules by Authority

74. (1) The Board must-
- (a) with the assistance of the ethics committee formulate or adopt a code of professional conduct that must be compliant with any applicable international code of professional conduct issued by an international body-
 - (i) setting out rules and guidelines for professional ethics in respect of registered persons and accredited bodies; and
 - (ii) specifying the conduct that constitutes unprofessional conduct and in respect of which the Board or an accredited body may conduct investigations and disciplinary proceedings under this Act; and
 - (b) with the assistance of the investigation and enforcement committee and the disciplinary committee formulate disciplinary rules including-
 - (i) the investigation of unprofessional conduct or any allegation relating to a respondent;
 - (ii) the procedures for the lodging of a complaint, charge or allegation against a respondent;
 - (ii) the form of a summons for the purpose of the attendance of a witness at a hearing, or for the production of any book, record, document or thing by a witness;
 - (iii) the manner of leading evidence, the rights of persons subject to an investigation or a disciplinary hearing or other inquiry and the recording of the proceedings at such inquiry or hearing;

- (iv) the enforcement of decisions of the investigation and enforcement committee, the investigation and enforcement committee of an accredited body, the disciplinary committee or the disciplinary committee of an accredited body under this Part;
- (v) the organisational mechanisms that an accredited body should have in place to perform its powers and duties under this Part, including without limitation-
 - (aa) the appointment, composition and functions of an inspection and quality assurance committee, an investigation and enforcement committee and a disciplinary committee for each accredited body;
 - (bb) the functions those committees must carry out under this Part on behalf of an accredited body which must correspond to the functions of the inspection and quality assurance committee, the investigation and enforcement committee and the disciplinary committee of the Board under this Part;
- (vi) the enforcement of compliance with this Act or any other law relating to registered persons or accredited bodies; and
- (vii) any other matter regulating an investigation, disciplinary hearing or enforcement action by the Board, any of its committees or an accredited body under this Act, which is necessary or expedient to achieve the objects and purposes of this Act.

(2) The code of professional conduct and the disciplinary rules made under subsection (1) will not have effect until published in the *Gazette*.

Continuing jurisdiction

75. (1) Subject to subsection (2), a formerly registered person continues to be subject to the jurisdiction of the Board and its committees or an accredited body and its committees with respect to any unprofessional conduct that occurred while the person was still a registered person.

(2) No complaint may be made or instituted under this Act against a formerly registered person more than six years after the day that person ceased to be a registered person.

Unprofessional conduct

76. (1) A registered person is guilty of unprofessional conduct if that person -

(a) fails to comply with or contravenes-

(i) this Act or any regulation, rule or standard made under **section 101**;

(ii) any provision of the code of professional conduct or disciplinary rules made under **section 74**; or

(iii) the code of conduct of the accredited body of which that person is a member,

in a manner, that in the opinion of the Board or an accredited body of which that registered person is a member relates to that person's suitability to be a registered person;

(b) fails or refuses to comply or complies insufficiently, with a lawful instruction of the Authority or an accredited body;

(c) commits a criminal offence which in the opinion of the Board or an accredited body is of a serious nature and renders the person unsuitable to be a registered person;

- (d) refuses or fails to cooperate fully in respect of a practice review, inspection or an investigation or hearing of a complaint;
- (e) is professionally incompetent by demonstrating a lack of knowledge, skill or judgment or a disregard for the welfare of a client or the public;
- (f) engages in the conduct that is harmful to the best interests of a client or the public or to the integrity of the accounting or auditing professions; or
- (g) any other conduct which the Board or an accredited body is satisfied on reasonable grounds constitutes unprofessional conduct.

(2) The powers of the Board or an accredited body to inquire into and deal with any complaint relating to a respondent are not limited to the conduct specified in subsection (1).

(3) A respondent who is found guilty of unprofessional conduct under this Part is liable to any of the penalties provided for under **section 87**.

Referral of record or report of unprofessional conduct to Board or accredited body

77. (1) If, in the course of any proceedings before any court of law, it appears to the court that there is *prima facie* proof of unprofessional conduct on the part of a registered person or formerly registered person, the court must direct that a copy of the record of the proceedings, or such part thereof as relates to that conduct, be sent forthwith to the Authority or to an accredited body of whom the registered or formerly registered person was a member, as the case may be.

(2) Whenever it appears to any regulator that there is *prima facie* proof of unprofessional conduct on the part of a registered person or formerly registered person, the regulator must forthwith send a report of that conduct to the Authority or to an accredited body of whom the registered or formerly registered person was a member, as the case may be.

(3) The Authority or accredited body concerned must consider any record or report received by it under subsection (1) or (2) as a complaint as if such report or record is a complaint under **section 78(3)**.

Complaint of unprofessional conduct or concerning accredited body

78. (1) A complaint alleging that the conduct of a respondent constitutes unprofessional conduct must be made in writing to the Board in the form and manner specified in the disciplinary rules.

(2) A complaint alleging that an accredited body has-

- (a) failed to investigate a complaint;
- (b) has failed to discipline any of its members in accordance with its code of ethics or the disciplinary rules; or
- (c) has otherwise contravened this Act,

must be made in writing to the Board in the form and in the manner specified in the disciplinary rules.

(3) The Board may of its own initiative or in respect of a complaint made under subsection (1) or (2) initiate an investigation under this Part if the Board is satisfied on reasonable grounds that a respondent is guilty of unprofessional conduct or that an accredited body committed the conduct referred to in subsection (2).

Service of copy of complaint

79. (1) Within the period set out in the disciplinary rules after receiving or initiating a complaint under **section 78(1)** or **(3)**, the Authority must serve on the respondent in the manner specified by the disciplinary rules-

- (a) a copy of the complaint, and

(b) written notice of the respondent's right to submit a response to the complaint under subsection (2);

(2) A respondent may submit to the Board a written response to a complaint within the period set out in the disciplinary rules after being served with a copy of the complaint.

(3) The Authority must after expiry of the period referred to in subsection (2) and within the period set out, and in accordance with, the disciplinary rules -

(a) serve a copy of any response to the complaint on the complainant where the complainant is a person other than the Board; and

(b) refer the complaint together with any response to the complaint to the investigation and enforcement committee;

Consideration by investigation and enforcement committee

80. Within the period specified in the disciplinary rules after the referral of a complaint under **section 79(3)** to the investigation and enforcement committee, that committee must consider the complaint and any response to the complaint, and may-

(a) dismiss the complaint, if in the opinion of the investigation and enforcement committee, the complaint is frivolous and vexatious, without merit or outside the expiry period referred to in **section 75(2)**;

(b) make any order that the disciplinary committee is authorised to make under **section 87(1)**, if the respondent consents to the order; or

(c) investigate the complaint or refer the complaint to an investigator.

Investigation by investigation and enforcement committee or investigator

- 81.** (1) The investigation and enforcement committee or an investigator-
- (a) may do all things necessary to ensure a full and proper investigation of a complaint;
 - (b) may deal with multiple complaints concerning a respondent individually or in combination;
 - (c) must consider the allegations and the evidence and ascertain the facts of each complaint in the manner that the investigation and enforcement committee or investigator considers appropriate;
 - (d) may make oral or written inquiries of any person who may have information relevant to the investigation;
 - (e) may require the respondent or another individual who is a registered person to be interviewed for the purpose of the investigation;
 - (f) may require the respondent to produce for examination any documents, records and other materials that are in the respondent's possession or under the respondent's control that may be relevant to the investigation;
 - (g) may copy and keep copies of any documents, records and other materials produced under paragraph (f); and
 - (h) may investigate any matter in addition to the complaint that arises in the course of the investigation and that may constitute unprofessional conduct or a contravention of this Act.
- (2) A respondent has the right for purposes of this section, to be represented by a legal practitioner of his or her choice.

(3) Whenever the investigation and enforcement committee or an investigator investigates a complaint that the conduct of a respondent constitutes incompetence, the investigation and enforcement committee may-

- (a) require the respondent to undertake such examination of knowledge or skills related to the public practice of that respondent that the investigation and enforcement committee directs to determine whether or not he or she is competent to practice as such; and
- (b) if the investigation and enforcement committee has reasonable grounds to believe that the capacity of respondent to practise is impaired by a disability or a medical condition, including an addiction or an illness, request him or her to submit to physical or psychological examinations by a qualified medical practitioner designated by the investigation and enforcement committee, but that respondent may at his or her own cost procure the services of a medical practitioner for another medical opinion.

(4) Whenever an investigator investigates a complaint and the respondent fails or refuses, without reasonable cause, to respond to an inquiry or comply with a requirement under subsection (1), or comply with a requirement under subsection (3), the investigator must report the failure or refusal to the investigation and enforcement committee in writing.

(5) Whenever the investigation and enforcement committee -

- (a) receives a report from an investigator under subsection (4); or
- (b) investigates a complaint and the respondent fails or refuses, without reasonable cause, to-
 - (i) respond to an inquiry or comply with a requirement under subsection (1); or
 - (ii) comply with a requirement under subsection (3);

the investigation and enforcement committee may recommend to the Board, and the Board may subject to subsection (6) suspend or impose terms and conditions on the registration of the respondent, until the respondent responds to the inquiry or complies with the requirement.

(6) The Board may not act under subsection (5) unless the Board has given the respondent a period of not more than 30 days in which to submit grounds for the Board not to proceed with an action contemplated by that subsection.

Investigation report

82. After completing an investigation, the investigation and enforcement committee or the investigator must, within period specified by the disciplinary rules, prepare a written report of the investigation and the findings thereof and provide that report to the investigation and enforcement committee.

Response to investigation report

83. (1) As soon as possible after receipt of the investigation report referred to in **section 82(1)** the investigation and enforcement committee must consider the report and do one of the following:

- (a) dismiss the complaint, if in the opinion of the investigation and enforcement committee-
 - (i) the complaint is frivolous or vexatious or without merit, or
 - (ii) there is insufficient evidence to support the complaint;
- (b) make any order that the disciplinary committee is authorised to make under **section 87(1)**, if the respondent consents to the order; or
- (c) refer the complaint to the disciplinary committee for a hearing.

(2) If the investigation and enforcement committee dismiss a complaint under **section 80(a)** or subsection (1)(a), the investigation and enforcement committee must serve on-

(a) the complainant and the respondent-

(i) written notice of and reasons for the dismissal;

(ii) written notice of the complainant's right to appeal the dismissal to the Appeal Board; and

(b) the Board, written notice of and reasons for the dismissal.

(3) Where the investigation and enforcement committee make an order under **section 80(b)** or subsection (1)(b), it must serve a copy of the order on the complainant, the respondent and the Board.

(4) Whenever the investigation and enforcement committee refer a complaint to the disciplinary committee under subsection (1)(c), it must-

(a) serve written notice of the referral on the complainant, the respondent and the Board;

(b) provide the disciplinary committee with a copy of and any response to the complaint; and

(c) subject to **sections 84 or 85**, present the complaint before the disciplinary committee and may, for that purpose, retain any legal resource or other assistance it considers necessary.

(5) The provisions of this section apply to an accredited body with the changes necessitated by the context.

Charge against respondent

84. (1) The disciplinary committee must conduct a hearing under this Part if the investigation and enforcement committee recommends that sufficient grounds exist for a charge to be brought against the respondent.

(2) The Authority must serve a charge sheet on the respondent in accordance with the provisions of the disciplinary rules.

(3) A charge sheet must inform the respondent-

(a) of the details and nature of the charge;

(b) that the respondent, in writing, must admit or deny the charge;

(c) that the respondent, together with the admission or denial, may submit a written explanation; and

(d) of the period specified in the disciplinary rules, which may not exceed 30 days, within which the respondent must submit an admission or a denial under paragraph (b).

(4) If a respondent admits guilt to all the elements of the charge, the respondent is considered to have been found guilty as charged.

(5) The disciplinary committee must, on the expiry of the period referred to in subsection (3)(d) in accordance with **section 85** commence a disciplinary hearing in respect of the respondent, including a respondent that under subsection (4) admitted guilt.

(6) The acquittal or the conviction of a respondent by a court of law for a criminal offence similar to the charge referred to in subsection (1) is not a bar to disciplinary proceedings against that respondent under this Part.

Hearing by disciplinary committee

85. (1) The disciplinary committee must-

- (a) hold a hearing into a complaint referred to it within the period set out in the disciplinary rules;
- (b) where the respondent admitted guilt as contemplated by **section 84(4)**, hold a hearing to enquire into aggravating or extenuating circumstances pertaining to the respondent and this section applies with the changes necessitated by the context to such hearing;
- (c) conduct its proceedings in accordance with the procedures specified by the disciplinary rules.

(2) The investigation and enforcement committee or a person appointed by the investigation and enforcement committee must, not less than 30 days before the date set for the hearing, serve in the manner set out by the disciplinary rules written notice of the date, time and place of the hearing and the charge sheet on-

- (a) the complainant, if any;
- (b) the respondent; and
- (c) the disciplinary committee.

(3) The disciplinary committee may retain any legal resource or other assistance that it considers necessary for the purposes of conducting a hearing.

(4) The investigation and enforcement committee may appoint a person, not being a Board member or a staff member of the Authority, to present the charge and the evidence relating to the charge to the disciplinary committee in the form and manner set out in the disciplinary rules.

(5) The investigation and enforcement committee may at any time prior to or during the disciplinary hearing terminate the appointment of a person referred to in subsection (4) and

replace him or her, if that committee is of the opinion that the person is not fulfilling his or her obligations.

(6) A hearing before the disciplinary committee is open to the public except where, in the opinion of the chairperson of the disciplinary committee, any part of the hearing must be held behind closed doors because-

- (a) the interests of a person other than the respondent may be detrimentally affected if the hearing, or part of the hearing, is not held in private; or
- (b) the desirability of avoiding public disclosure of financial, personal or other matters in the interest of a person affected, other than the respondent, or the public interest outweighs the desirability of adhering to the principle that a hearing be open to the public.

(7) The disciplinary committee may summon any person in the form and manner specified by the disciplinary rules-

- (a) who may be able to give material information concerning the subject of the hearing; or
- (b) who the committee suspects or believes has in his, her or its possession or custody any information which has a bearing on the subject of the hearing,

to appear before the disciplinary committee at the time, date and place specified in the summons, to be questioned or to produce any information, including but not limited to any working papers, statements, correspondence, books or other documents.

(8) The respondent has the right to appear, to be represented by a legal practitioner, and to examine, cross-examine and re-examine witnesses at a hearing in accordance with the procedures set out by the disciplinary rules.

(9) Where the respondent fails to appear at a hearing after being served with notice in accordance with subsection (2), the disciplinary committee may proceed with the hearing in

the absence of the respondent and make any decision, determination or order as if the respondent was in attendance.

(10) The law relating to privilege, as applicable to a witness summoned to give evidence or to produce a book, document or object in a civil trial before a court of law apply with the necessary changes in relation to the examination of any information, or to the production of such information to the disciplinary committee by any person called as a witness.

Determination and order

86. (1) Within 30 days after the conclusion of the hearing the disciplinary committee must make a determination in writing on whether or not the respondent is guilty of unprofessional conduct.

(2) If respondent admitted guilt as contemplated by **section 84(4)** or the disciplinary committee finds that the respondent is guilty of unprofessional conduct, that committee must-

- (a) take into consideration any aggravating or mitigating circumstances;
- (b) impose any of the orders referred to in **section 87**; and
- (c) serve the respondent in the manner set out in the disciplinary rules with the determination and the order made and inform the Board thereof.

Sanctions if respondent found guilty

87. (1) If a respondent admits or is found guilty of unprofessional conduct the disciplinary committee must make one or more of the following orders and inform the Board thereof-

- (a) an order directing the respondent to undergo additional education or training;
- (b) an order recommending that the respondent participates in counselling or a rehabilitative treatment program;

- (c) an order reprimanding the respondent;
- (d) an order imposing terms and conditions on the registration or accreditation of the respondent, as the case may be;
- (e) an order suspending the registration or accreditation of the respondent for a specified period of time or until the occurrence of a specified future event, subject to such conditions as the disciplinary committee may determine;
- (f) an order cancelling the registration or accreditation of the respondent;
- (g) an order requiring the respondent to pay all or part of the costs incurred by the disciplinary committee to conduct the hearing;
- (h) an order imposing a fine on the respondent in an amount prescribed under **section 101**;
- (i) an order imposing any other sanction specified by the disciplinary rules that the disciplinary committee considers to be appropriate.

(2) The Authority may recover any fine imposed under subsection (1)(h) by means of proceedings in a competent court.

(3) The Authority must give effect to the decision of the disciplinary committee and must publish the finding and the sanction imposed by the disciplinary committee by notice in the *Gazette*, unless the Board is satisfied on reasonable grounds that exceptional circumstances exist not to publish the finding and sanction.

(4) Where an order as to costs has been made under subsection (1)(g), the amount thereof must be recovered by the Authority from the respondent concerned, and any amount so recovered must be paid into the education fund referred to in **section 17(3)(c)**.

(5) Where the Board is satisfied that a respondent has failed to comply with an order of the investigation and enforcement committee or the disciplinary committee under this Part, the Board may make an order suspending the respondent's registration subject to any terms and conditions that the Board considers appropriate.

(6) The Board may not act as contemplated by subsection (5) unless the Board has afforded the respondent a period of not more than 30 days in which to submit reasons for the respondent's failure to comply with an order referred to in that subsection.

Inquiry in respect of registered person not to prejudice civil or criminal liability

88. (1) The institution of disciplinary proceedings under this Part against a respondent does not prejudice the right of any person, body or institution to institute civil proceedings, or the Prosecutor-General to institute criminal proceedings, or an employer to take disciplinary action, against that person based on the same facts.

(2) The institution of civil or criminal proceedings against a registered or formerly registered person or the fact that an employer has taken action against a person does not prejudice the right of the Board or an accredited body to institute an investigation under this Part against that person, and from imposing a penalty on that person for unprofessional conduct arising from the same facts.

(3) Any incriminating reply or information obtained, or incriminating evidence directly or indirectly derived from questioning in an inquiry is not admissible as evidence against the person concerned in criminal or civil proceedings in a court of law.

(4) Despite subsection (3), incriminating evidence referred to in that subsection is admissible in criminal proceedings if the person stands trial on a charge referred to in **section 89**.

PART 13 OFFENCES

Offences relating to registration and certificates

- 89.** A person who-
- (a) procures or attempts to procure registration or a certificate to practise under this Act by knowingly making or producing or causing to be made any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise;
 - (b) wilfully makes or causes to be made any falsification in any register kept by the Authority;
 - (c) forges, alters or counterfeits any certificate issued under this Act;
 - (d) uses any forged, altered or counterfeit certificate issued under this Act knowing the same to have been forged, altered or counterfeited; or
 - (e) impersonates a registered person or buys, sells or fraudulently obtains a certificate to practise,

commits an offence and is liable on conviction to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Reportable irregularities and false statements in connection with audits

90. (1) A registered auditor who fails to report an irregularity in accordance with **section 64**, or who, in connection with the audit of any financial statement, knowingly or recklessly expresses an opinion or makes a report or other statement which is false in a material respect, commits an offence.

(2) Where a registered auditor who failed to report an irregularity is a firm, subsection (1) applies to the individual registered auditor responsible and accountable for that audit.

(3) A person convicted of an offence under subsection (1) is liable on conviction to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Offences relating to disciplinary hearings

91. A person who -

(a) has been duly summoned to appear before the disciplinary committee for the purposes of a hearing and who –

(i) refuses or fails, without sufficient cause, to attend the hearing at the date, time and venue specified in the summons;

(ii) refuses to take the oath stipulated in the disciplinary rules or to make an affirmation if so required by the person presiding at the hearing;

(iv) leaves the hearing without the consent of the person presiding at the hearing, whether or not that person has given evidence; or

(v) refuses to give evidence before the disciplinary committee, or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her, or refuses to produce any document, book, record or thing which that person has in terms of the summons been required to produce; or

(b) obstructs or interrupts any part of the proceedings at any hearing held under this Part,

commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.

False evidence

92. A person who gives false evidence on oath or affirmation at any inquiry or hearing conducted under **Part 12**, knowing that such evidence is false, commits an offence and is on conviction liable to the penalties prescribed by law for the crime of perjury.

Offences relating to inspections

93. A person who-

- (a) without lawful excuse refuses to take an oath or to make an affirmation when requested to do so by a member of the inspection and quality assurance committee, an inspector or a forensic inspector;
- (b) intentionally or recklessly-
 - (i) gives any false information to a member of the inspection and quality assurance committee of the Board or an accredited body, an inspector or a forensic inspector; or
 - (ii) hinders a member of such inspection and quality assurance committee, inspector or forensic inspector in the exercise of the powers or performance of the duties of the member of the inspection and quality assurance committee, inspector or forensic inspector;
- (c) without lawful excuse refuses or fails to-
 - (i) answer a question put by a member of the inspection and quality assurance committee of the Board or an accredited body, an inspector or a forensic inspector which relates to the affairs of a person under inspection; or
 - (ii) comply with any reasonable request by a member of that inspection and quality assurance committee, inspector or forensic inspector;

- (d) has been duly summoned under section 66(4)(d)(iv) or 69(2)(d) and without sufficient or reasonable cause fails to-
- (i) appear at the time and place specified in the summons;
 - (ii) remain in attendance before being excused by the inspector from further attendance; or
 - (iii) file with member of the inspection and quality assurance committee, an inspector or a forensic inspector any document or item referred to in the summons; or
- (e) violates an oath of secrecy prescribed under **section 101**,

commits an offence and is liable on conviction to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART 14 APPEALS

Appeal Board

94. (1) There is established an Appeal Board to hear and determine appeals made to it by a registered person, trainee auditor, trainee accountant or trainee accounting technician or an accredited body (hereafter referred to as the “appellant”) aggrieved by a decision made under this Act by the Board or any of its committees or the Authority, other than a decision made with the approval of the Minister, or any accredited body (hereafter referred to as the “respondent”).

(2) The Appeal Board consists of three members appointed by the Minister who must include-

- (a) a legal practitioner with at least 10 years' experience as an admitted legal practitioner or a retired judge, who must be its chairperson;
- (b) individuals who possess knowledge and a minimum of 10 years' experience in public practice (but who may not be in public practice for a period of at least three years before the date of such appointment), corporate governance or finance, law or other related fields of expertise.

(3) A person does not qualify for appointment as a member of the Appeal Board, if that person is disqualified from appointment on the grounds set out by **section 6**.

(4) Subject to subsection (3), a member of the Appeal Board holds office for a period of three years and, at the expiration of that period, is eligible for re-appointment: Provided that if there are appeals pending when the term of office the members of the Appeal Board ends, the Appeal Board must continue to hear and determine those appeals, which must be finalized no later than three months after such terms of office ends, failing which such appeal lapses.

- (5) A member of the Appeal Board vacates office if the member-
- (a) becomes subject to a disqualification referred to in subsection (3);
 - (b) resigns from office by written notice to the Minister; or
 - (c) is removed from office by the Minister under subsection (5).

(6) The Minister may, on good cause shown, by notice in writing remove a member of the Appeal Board from office on the grounds of misconduct, incapacity, incompetence or loss of confidence after having given the member concerned a reasonable opportunity to be heard.

(7) The Minister may suspend a member of the Appeal Board from office without complying with subsection (6), if the Minister is satisfied that the member is guilty of dishonesty, gross misconduct or other serious unbecoming or inappropriate conduct such that

it is necessary to act expeditiously in order to protect the integrity of the Appeal Board or the accounting or auditing profession in Namibia, but the Minister must give notice to the member as soon as practicable thereafter and consider any representations made by the member on the matter.

(8) If a member of the Appeal Board dies or the office of a member becomes vacant as a result of the happening of an event referred to in subsection (5), the Minister may, with due regard to subsection (3), appoint a person to fill the vacancy for the unexpired portion of the term of office of the member concerned.

(9) If, because of death, illness, resignation or of any other reason, a member of the Appeal Board is unable to complete a hearing, the chairperson of the Appeal Board-

- (a) may direct that the hearing of that matter proceeds before the remaining members of the Appeal Board; or
- (b) must, if the number of the members hearing the appeal is less than two, terminate the proceedings before the Appeal Board, whereupon the Minister must forthwith appoint a person to fill the vacancy on the Appeal Board pursuant to subsection (8).

(10) If the proceedings before the Appeal Board are terminated in terms of subsection (9)(b), the chairperson must, as soon as the Minister has appointed a person to fill the vacancy pursuant to subsection (8), ensure that the Appeal Board conducts a new hearing of the appeal

(11) When the Appeal Board considers it necessary that the Appeal Board be assisted by a person or persons who have expert knowledge of a particular matter, it may appoint a person or persons to provide it with expert knowledge, but such person or persons does or do not have the right to participate in any of its decisions.

(12) Members of the Appeal Board must be constituted to be independent from the Board and the Minister.

(13) All expenditure incurred by the Appeal Board, including remuneration payable to its members, must be defrayed out of, or paid out from, public funds as determined by the Minister.

(14) The Minister must make arrangements for the performance of the administrative and clerical work of the Appeal Board, including the designation or appointment of a secretary and other support staff, the cost of which forms part of the expenditure referred to in subsection (13).

Appeals

95. (1) An appellant must lodge an appeal within 30 days of the delivery of the decision of a respondent in the manner, and on payment of the fees prescribed by the Minister, but the Appeal Board may on good grounds extend the period for the lodging of an appeal, on application in the prescribed form and manner.

(2) An appeal under subsection (1) takes place on the date, at the place and time determined by the Appeal Board and in accordance with the rules made under **section 101(4)**.

(3) An appeal is decided on the affidavits and supporting documents presented to the Appeal Board by the parties to the appeal.

(4) Despite the provisions of subsection (3) the Appeal Board may-

- (a) summon any person who, in its opinion, may be able to give information for the purposes of deciding the appeal or who it believes has in his, her or its possession, custody or control any document which has any bearing upon the decision under appeal, to appear before it on a date, time and place specified in the summons, to be questioned or to produce any relevant document and retain for examination any document so produced;
- (b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and

- (c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his, her or its possession, custody or control.
- (5) The chairperson of the Appeal Board may determine any other procedural matters relating to an appeal.
- (6) An appellant or respondent to an appeal is entitled to be represented at an appeal by a legal practitioner or any person of his or her choice.
- (7) The Appeal Board may-
- (a) confirm, set aside or vary a decision of a respondent; or
 - (b) refer a matter back for consideration or reconsideration by a respondent in accordance with the directions of the Appeal Board.
- (8) The decision of a majority of the members of the Appeal Board constitutes its decision.
- (9) The decision of the Appeal Board must be in writing, and a copy thereof must be made available to the appellant and the respondent concerned.
- (10) If the Appeal Board sets aside any decision of a respondent, the fees contemplated in subsection (1) paid by the appellant in respect of the appeal in question must be refunded to the appellant.
- (11) If the Appeal Board varies any such decision, it may direct that the whole or any part of such fees be refunded to the appellant.
- (12) Subject to subsection (13), a decision of the Appeal Board may be taken on appeal to the High Court as if it were a decision of a magistrate in a civil matter.

(13) The launching of appeal proceedings in terms of subsection (12) does not suspend the operation or execution of a decision, unless the Appeal Board directs otherwise.

PART 15 GENERAL PROVISIONS

Limitation of liability

96. The Minister, a Board member, a member of a committee, the chief executive officer or a staff member of the Authority, a member of the Appeal Board, an inspector, a forensic inspector or any other person engaged by the Authority, authorised to exercise any power or perform any function conferred or imposed by or under this Act is not liable in respect of anything done or omitted to be done in good faith in the exercise of a power or the performance of a duty or function, or for anything that may result from anything done or omitted to be done, unless such thing is done or omitted to be done due to the wilful misconduct, gross negligence, dishonesty or fraud of that person.

Requirement of professional indemnity insurance

97. Every registered person or classes of registered persons must obtain professional indemnity insurance in the amount or amounts determined by the Board by notice in the *Gazette*.

Rules relating to practice under firm name

98. (1) Where a registered auditor, registered accountant or registered accounting technician is practising under a firm name or title, there must appear on every letterhead bearing the firm name or title-

- (a) the present first names, or initials, and surname of that auditor, accountant or accounting technician;
 - (b) in the case of a partnership, at least the present first names, or initials, and surnames of the managing partners or, if there are no managing partners, of the active partners or, where such a letterhead is used only by a branch office of the partnership, at least the present first names, or initials, and surnames of the managing partners at that branch office or, if there are no such resident partners, of the partners assigned to that branch office;
 - (c) in the case of a company, the names of its directors as required by section 179 of the Companies Act as well as its registration number; or
 - (d) in the case of a close corporation, the names of its members and its registration number.
- (2) The letterhead of a partnership must indicate where the present first names, or initials, and surnames of all partners may be obtained.

Confidentiality

99. (1) No person who is or was concerned with the performance of any function under this Act may disclose any information obtained in the performance of that function except-

- (a) for the purpose of an investigation or a hearing under **Part 12**;
- (b) if the person of necessity supplies it in the performance of functions under this Act;
- (c) when required to do so by order of a court of law;

- (d) at the written request of, and to, any appropriate regulator which requires it for purposes of an investigation or any disciplinary action or criminal prosecution; or
- (e) at the written request of, and to, any appropriate international regulator of auditors or accountants, that requires the information for the purpose of an inspection, with the consent of a registered auditor or registered accountant affected thereby.

(2) Every Board member, committee member, employee, consultant, inspector, forensic inspector or any person in service of the Authority must, on assumption of office, take an oath of secrecy in the prescribed manner and form.

(3) Subsection (2) applies with the changes necessitated by the context to an accredited body or the entity responsible for its governance.

Exemption by Board

100. (1) The Board may on application or on its own initiative exempt a person or categories of persons who renders accounting services in Namibia from the provisions of this Act subject to the following:

- (a) the person must be a member in good standing of a body in Namibia which governs the practice of a profession;
- (b) the body must maintain and enforce rules to ensure that its members-
 - (i) are fit and proper persons;
 - (ii) meet requirements relating to education, practical training and experience, which are acceptable to the Board.

(2) In assessing any application referred to in subsection (1) the Board may request information from the applicant regarding his or her membership of the body referred to in that subsection, education, practical training or experience.

(3) The Board must by notice in the *Gazette* publish the names of all persons or categories of persons exempted in accordance with subsection (3).

(4) Notwithstanding the generality of subsection (1)-

(a) a member of the Law Society established in terms of section 40 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

(b) an estate agent as defined by section 1 of the Estate Agents Act, 1976 (Act No. 112 of 1976) to whom the Estate Agents Board established in terms of section 2 of that Act has issued a registration certificate in terms of section 16(1)(3) of that Act,

is exempted from the provisions of this Act.

(5) In this section, “profession” means an occupation, practice, or vocation requiring mastery of knowledge and skills through formal education and practical experience, governed by a body responsible for its supervision or regulation.

Regulations, rules and standards

101. (1) The Minister may, on the recommendation of the Board, make regulations regarding -

(a) the procedures relating to the nomination of the members of the Board;

(b) requirements to be complied with in connection with the advertising of the public practice of a person in the audit professions;

(c) canvassing or touting for clients by registered persons;

- (d) the circumstances, in addition to the circumstances referred to in this Act, in which a name may be removed from, or restored to, a register;
 - (e) the conducting of practice reviews and inspections under **Part 11**, regarding-
 - (i) the powers of the persons authorised to conduct such practice reviews or inspection;
 - (ii) the powers of the Board relating to a report received from a person referred to in subparagraph (i);
 - (f) the manner in which the Board may perform or execute any power or function under this Act;
 - (g) the fines which the Board may impose as contemplated in **section 87(1)(h)** and the payment thereof; and
 - (h) the fees payable to members of the Appeal Board including sitting fees and fees for preparation of appeals;
 - (i) any matter required to be prescribed by the Minister under this Act;
 - (j) any matter which the Minister deems necessary or expedient for the achievement or promotion of the objects of the Authority or for the exercise of its powers or for the performance of its functions.
- (2) Different regulations may be made under this Act in respect of the different categories of registered persons.
- (3) Any regulation made under this Act may prescribe, unless otherwise provided in this Act, a fine not exceeding N\$2 000,000 or a period of imprisonment not exceeding five years, or both such fine and such imprisonment, as penalty for the contravention of such regulation or failure to comply therewith.

(4) The Minister, with the concurrence of the Appeal Board, may make rules relating to-

- (a) the manner in which an appeal to the Appeal Board against a decision of a respondent must be made;
- (b) the conduct of proceedings before the Appeal Board and the procedures to be followed by the Appeal Board, including matters relating to condonation for non-compliance and the admissibility of evidence;
- (c) witnesses, including payment of expenses and costs incurred by witnesses, offences by or relating to witnesses and other matters relating to witnesses;
- (d) sittings of the Appeal Board;
- (e) the integrity of the Appeal Board and measures that are necessary or expedient to prevent the Appeal Board or a member of the Appeal Board from being insulted, disparaged or belittled or to prevent the proceedings or findings of the Appeal Board from being prejudiced, influenced or anticipated;
- (f) the fees payable by the appellant; and
- (g) any other matter which the Minister considers necessary to ensure effective and expeditious resolution of matters before the Appeal Board.

(5) Rules made under subsection (4) may create offences for contraventions of those rules and penalties for such contraventions which may not exceed a fine of N\$20 000 or imprisonment for a period not exceeding 12 months or both such fine and such imprisonment

- (6) The Board may by notice in the *Gazette* issue standards relating to any matter-
 - (a) which the Board is empowered, permitted or required to issue standards on under this Act; or

- (b) which the Board may consider necessary, expedient or advisable for the due carrying out of the provisions of this Act and to achieve the objects and intent of this Act.

(7) The notice referred to in subsection (6) must state the date on which the standard will come into effect.

- (8) Before issuing a standard, the Board must-

- (a) publish a draft of the proposed standard in the *Gazette* and bring it to the attention of the registered or affected persons or persons receiving training to become registered persons or accredited bodies to which the standard will apply;
- (b) give persons referred to in paragraph (a) not less than 30 days after the date of publication of the proposed standard to make representations in writing to the Board with respect to the proposed standard; and
- (c) take any such representations into account in determining whether to issue the standard as originally published or in a modified form.

(9) If the Board considers it necessary on an urgent basis, it may issue a standard without following the procedure set out in subsection (9), but any such standard ceases to have effect at the end of 90 days after it has been issued, unless the procedure referred to in that subsection has been followed.

(10) The Board may by notice in the *Gazette* revoke or modify a standard, subject to the procedure referred to in subsection (9).

(11) The standards issued pursuant to this section may provide for penalties, including administrative sanctions and penalties for any contravention of the standards not exceeding such amounts as may be prescribed.

Jurisdiction of magistrate's court

102. Despite anything to the contrary in any law, a magistrate's court has jurisdiction to impose any penalty provided for by this Act.

Repeal of law and savings

103. (1) Subject to subsection (2), the Public Accountants' and Auditors' Act, 1951, is repealed.

(2) Except as otherwise provided in **section 104**, any notice, regulation, rule, authorisation or order issued, made or granted, or any removal from the register, appointment or any other act done, or regarded to have been issued, made, granted, or done under or under a provision of the repealed Act must be regarded as having been issued, made, granted, or done under the corresponding provision of this Act and continues to have force and effect, except if it is inconsistent with this Act or until it is set aside or repealed.

Transitional provisions

104. (1) A Board member in office immediately prior to the commencement of this Act continues to hold office as a Board member for the remainder of the period for which he or she was appointed as such under the repealed Act.

(2) A person whose name immediately before the date of commencement of this Act appears in a register kept by the Board is regarded to be registered under, and subject to, this Act.

(3) Any proceedings in connection with an application for registration as an auditor or accountant still pending at the date of commencement of this Act must, with effect from that date, be deemed to be proceedings for registration as an auditor or accountant contemplated in this Act and must further be administered, considered and completed by the Board.

(4) A certificate to practise issued immediately before the date of commencement of this Act is regarded to have been issued under this Act, subject to any restriction or condition imposed upon a registered person's practice under the repealed Act.

(5) Any period of practical training completed under the repealed Act before the date of commencement of this Act is regarded, from that date, to have been a period of practical training completed under this Act.

(6) Any disciplinary proceedings or criminal proceedings instituted under or pursuant to the repealed Act and not finalised immediately before the date of commencement of this Act may be continued or enforced as if the repealed Act had not been repealed.

(7) Any person in the employment of the Public Accountants' and Auditors' Board established under the repealed Act immediately before the date of commencement of this Act is regarded from that date to be so employed by the Authority under this Act on the same conditions of service as were applicable to that person on that date.

(8) Any training contract registered under the repealed Act is deemed to be registered under this Act.

(9) Any unfinished business of the Public Accountants' and Auditors' Board established under the repealed Act on the date of commencement of this Act, which is dealt with by the Authority under a provision of the repealed Act, and for which no corresponding provision appears in this Act, must be completed by the Authority as if this Act had not been passed.

(10) Any person who was not required to be registered with the Public Accountants' and Auditors' Board established under the repealed Act, but has such duty to register from the commencement of this Act, must comply with this Act within a period of 12 months commencing on 1 January following the date of commencement.

Short title and commencement

105. (1) This Act is called the Accountants and Auditors Regulatory Authority Act, 2022, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (1) or (2).