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General Notice

PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD

No. 100

2020

RULES GOVERNING THE INVESTIGATION AND DISCIPLINE OF PUBLIC ACCOUNTANTS AND AUDITORS UNDER THE PUBLIC ACCOUNTANTS' AND AUDITORS' ACT, 1951

The Public Accountants' and Auditors' Board hereby publishes for general notification the Rules Governing the Investigation and Discipline of Public Accountants and Auditors set out in the Schedule, that the Board prescribed under section 21(1)(g) of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

J. KANDJEKE
CHAIRPERSON
PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD

SCHEDULE**RULES GOVERNING THE INVESTIGATION AND DISCIPLINE OF PUBLIC ACCOUNTANTS AND AUDITORS UNDER THE PUBLIC ACCOUNTANTS' AND AUDITORS ACT, 1951 (ACT NO. 51 OF 1951)****INDEX****PART 1
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PART 1
INTRODUCTORY PROVISIONS

Definitions

1. In these Rules, unless the context indicates otherwise, any word or expression to which a meaning is assigned in the Act, has the same meaning and –

“accounting services” includes-

- (a) the preparation of financial records, returns, statements or information;
- (b) making any presentation on behalf of a client to third parties in matters concerning accounting or insolvency matters;
- (c) taxation services, including-
 - (i) tax return preparation and submission;
 - (ii) tax calculations for the purpose of preparing accounting entries;
 - (iii) tax planning and tax advisory services; or
 - (iv) assistance in the resolution of tax disputes;
 - (v) services offered to ensure compliance with tax or tax-related laws;
- (d) advisory services, including –
 - (i) accounting advisory and financial management advisory services, which include accounting support, conversion services for new and revised accounting standards, financial modelling and project management;
 - (ii) the provision of advice concerning insolvency or related matters;
 - (iii) business performance services which include business effectiveness, people and change management, operational and business finance;
 - (iv) internal audit services which include risk and compliance services, review and monitoring of internal controls, risk management, compliance services, corporate governance and audit committee advisory services;
 - (v) corporate finance services which include mergers and acquisitions, valuations, infrastructure financing, debt and capital markets, due diligence reviews, transaction services and advisory services to listed companies;

- (vi) corporate recovery services which include liquidation and insolvency administration, *curator bonis* appointments, administration of deceased estates, judicial management and trusteeships;
 - (vii) financial risk management services which include actuarial services, banking and risk advisory services, regulatory and compliance services and technical accounting; or
 - (viii) information and communications technology advisory services which include security, privacy and continuity services, enterprise resource planning, information system audit services, project advisory services, governance and performance;
- (e) forensic services including-
- (i) dispute advisory and resolution, ethics and integrity monitoring, fraud risk management, intellectual property and other investigations and regulatory compliance services; or
 - (ii) the analysis of financial or other information, with the objective of providing a forensic report in respect thereof; or
- (f) other assurance and related services including-
- (i) company accounting advisory services which include preparation of accounting records and financial statements in accordance with the accounting standards; or
 - (ii) company statutory services;
- (g) any other services substantially similar to the services contemplated in paragraphs (a) to (f);

“auditing services” means an independent examination by an auditor 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 recognized financial reporting framework;
- (b) financial or other information with the objective of expressing an opinion thereon;

“CEO” means the person appointed by the PAAB as its Chief Executive Officer under section 21(1) (a) of the Act or any person acting in that capacity and includes the duly authorised representative of the CEO;

“**Chairperson of the Disciplinary Committee**” means a retired judge or senior legal practitioner who is appointed by the PAAB as the chairperson of the Disciplinary Committee;

“**Court**” means any Court established by law;

“**Disciplinary Committee**” means the committee established by the Board under section 10(1) of the Act;

“**firm**”, in the context of these Rules, means-

- (a) a partnership, company or sole proprietor;
- (b) an entity that controls the parties referred to in paragraph (a), through ownership, management or other means; or

- (c) an entity controlled by the parties referred to in paragraph (a), through ownership, management or other means;

“**IESBA Code of Ethics**” means Code of Ethics for Professional Accountants issued by the International Ethics Standards Board of Accountants;

“**improper conduct**” means improper conduct prescribed under **Part 2**;

“**Investigations Committee**” means the Investigations Committee established by the Board under section 10(1) of the Act;

“**member**” where it refers to a member of PAAB means a person who is a registered accountant and auditor and solely in the context of investigations by the Investigations Committee or disciplinary action by the Disciplinary Committee includes a person registered as a trainee accountant and auditor;

“**PAAB**” or “**the Board**” means the Public Accountants’ and Auditors’ Board established under section 2 of the Act;

“**professional services**” in the context of these Rules, means accounting services or auditing services or both;

“**pro forma prosecutor**” means the person appointed under **Rule 15(4)** or **Rule 20(2)** to present a charge of improper conduct or any aggravating or mitigating circumstances, as the case may be, to the Disciplinary Committee;

“**public practice**” has the meaning assigned to it in section 1 of the Act, and “**practice**” has a similar meaning;

“**registered accountant and auditor**”, in the context of these Rules, means an individual registered as an accountant and auditor with PAAB or who was so registered at the time that the alleged improper conduct took place, whether that registered accountant and auditor is or was in public practice or not, and includes the duly authorised representative of such registered accountant and auditor;

“**respondent**” means a registered accountant and auditor whose conduct is the subject of any proceedings of whatsoever nature (including a complaint or a decision whether or not to refer such conduct for investigation) under these Rules as well as the legal representative of such registered accountant and auditor, if any;

“**register**” means the register of accountants and auditors referred to in section 9(1) of the Act; and

“**the Act**” means the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951).

Legislative mandate

2. PAAB hereby prescribes under section 21(1)(g) of the Act -
 - (a) conduct constituting improper conduct by a registered accountant and auditor;
 - (b) the manner in which an allegation or a charge of improper conduct must be investigated;
 - (c) the manner in which an allegation or a charge of improper conduct must be heard; and
 - (d) the sanctions that may be imposed after an investigation or hearing on a charge of improper conduct.

PART 2 IMPROPER CONDUCT

Introduction

3. (1) PAAB has disciplinary jurisdiction over all registered accountants and auditors no matter where the conduct that is, or allegedly is, improper, is perpetrated.

(2) All registered accountants and auditors must be fully acquainted with the contents and comply with the provisions of the IESBA Code of Ethics, which PAAB adopted.

(3) The IESBA Code of Ethics, as periodically amended by the International Ethics Standards Board of Accountants is available on the official website of PAAB at www.paab.com.na or www.ethicsboard.org or such other website notified by PAAB to its members from time to time.

(4) While the IESBA Code of Ethics provides guidance on which acts of conduct constitute improper conduct, each of the acts or omissions as specified in **Rule 4** on the part of a registered accountant and auditor constitutes improper conduct.

Improper conduct

4. (1) A registered accountant and auditor is guilty of improper conduct if that accountant and auditor without reasonable cause or excuse—

- (a) contravenes or fails to comply with any provision of the Act with which that accountant and auditor must comply;
- (b) contravenes or fails to comply with any provision of any other Act with which that accountant and auditor in providing professional services must comply;
- (c) has been found guilty in any forum, including a Court, of any offence involving dishonesty, and in particular (but without prejudice to the generality of the foregoing) theft, fraud, forgery or uttering a forged document, perjury, bribery, corruption or a similar offence;
- (d) is dishonest in the performance of any work or duties devolving upon that accountant and auditor in relation to –
 - (i) any professional services performed by that accountant and auditor; or
 - (ii) any office of trust which that accountant and auditor has undertaken or accepted;
- (e) fails to perform any professional services or duties with the degree of professional competence, due care and skill as in the opinion of PAAB may reasonably be expected, or fails to perform the professional services or duties at all;
- (f) with intent to evade or to assist any other person to evade any tax, duty, levy or rate whatsoever –
 - (i) knowingly or recklessly prepares or makes, or assists any other person to prepare or make, any false statement (whether such statement be oral or in writing);

- (ii) signs any false statement in relation thereto recklessly or knowing it to be false; or
- (iii) knowingly or recklessly prepares or maintains any false books of accounts or other records;
- (g) allows any other person to hold himself or herself out as a registered accountant and auditor, unless such person is so registered;
- (h) enters into partnership with any person other than a registered accountant and auditor, either through or by means of a person not qualified to be a registered accountant and auditor or by means which are not open to that accountant and auditor;
- (i) pays or allows or agrees to pay or allow, directly or indirectly to any person (other than a registered accountant and auditor or a retired partner or the legal representative of such partner) any share, commission or brokerage out of the fees or profits for his or her professional services;
- (j) accepts or agrees to accept any part of the fees or profits of a legal practitioner, auctioneer, broker, or other agent who is not a registered accountant and auditor;
- (k) solicits clients for professional work in a manner other than that approved by PAAB and as advised to members from time to time;
- (l) advertises professional services in a manner other than that approved by PAAB and as advised to members from time to time;
- (m) discloses information acquired in the course of a professional engagement without the consent of the client, except as required by any law;
- (n) certifies or submits in the name of that accountant and auditor or in the name of a firm a report of an examination of financial statements which report has not been prepared by him or her or under his or her professional oversight;
- (o) expresses his or her opinion on financial statements of any business or any enterprise in which he or she, his or her immediate family, his or her firm or partner in his or her firm has an interest, unless that interest is not a material conflict of interests and he or she discloses such interest in his or her audit report;
- (p) charges in respect of any professional services fees which are based on a percentage of profits or which are contingent on results;
- (q) fails to withdraw from rendering professional services to an entity where he or she considers that he or she may have a conflict of interest or lack of professional independence in relation to that entity;
- (r) fails to report a material irregularity as contemplated by section 26(3) and section 26(3A) of the Act or by the Companies Act, 2004 (Act No. 24 of 2004), the Close Corporations Act, 1988 (Act No. 26 of 1988), the Short-term Insurance Act, 1998 (Act No. 4 of 1998), the Long-term Insurance Act, 1998 (Act No. 5 of 1998), the Namibia National Reinsurance Corporation Act, 1998 (Act No. 22 of 1998), the National Housing Enterprise Act, 1993 (Act No. 5 of 1993) or any other law;
- (s) commits gross negligence in the conduct of professional services;

- (t) fails to keep the funds of a client in a banking account separate from the banking account of that accountant and auditor or that of his or her firm or fails to use such funds for the purposes for which they are intended;
- (u) includes in any statement, return or form to be submitted to the PAAB any particulars knowing them to be false;
- (v) practices as registered accountant and auditor through a body in the manner contemplated in paragraphs (a) to (u) above;
- (w) generally, engages in any act which is likely to bring the accountancy or auditing profession or PAAB into disrepute;
- (x) commits a material breach of any professional obligation arising in accordance with the Act; or
- (y) contravenes or fails to comply with any rule or requirement of the IESBA Code of Ethics governing professional conduct, where such rule or requirement is not already prescribed in these Rules.

(2) The acts or omissions specified in **subrule (1)** are not intended to be an exhaustive list of acts or omissions which might constitute improper conduct and in this regard a registered accountant and auditor will generally be regarded as having committed improper conduct if he or she breaches the fundamental principles inherent to the accounting and auditing professions, namely-

- (a) integrity, that is, to be straightforward and honest in all professional and business relationships;
- (b) objectivity, that is, not allow bias, conflict of interest or undue influence of others to override professional or business judgments;
- (c) professional competence and due care, that is, to maintain professional knowledge and skill at the level required to ensure that a client receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards;
- (d) confidentiality, that is, to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of such accountant and auditor or third parties; and
- (e) professional behavior, that is, to comply with relevant laws and regulations and avoid any conduct that discredits the accounting and auditing profession.

PART 3 INVESTIGATION OF IMPROPER CONDUCT

Investigations Committee

5. (1) The Board under section 10(2) of the Act hereby assigns its powers to investigate any complaint, allegation or charge of improper conduct to its Standing Committee known as the Investigations Committee.

(2) The Investigations Committee is primarily responsible for the investigation of allegations of improper conduct in accordance with this Part and its Terms of Reference that the Board may determine from time to time.

(3) In accordance with the provisions of section 10(2) of the Act, the Board is not entitled to amend or repeal any decision arrived at or anything done by the Investigations Committee under the powers assigned to it under **subrule (1)**.

Allegation or charge of improper conduct

6. (1) If PAAB reasonably believes, either of its own motion or on account of a complaint received, that a member is guilty of improper conduct, it must forthwith cause an investigation by the Investigations Committee to be made into the alleged conduct of such member in accordance with the provisions of these Rules.

(2) Without limiting the extent of **subrule (1)**, PAAB, acting through its CEO, must refer an allegation or charge of improper conduct to the Investigations Committee if-

- (a) the allegation or charge is in the public domain and the CEO on reasonable grounds (including a report from a foreign regulator) suspects that a registered accountant and auditor has committed an act which may render such person guilty of improper conduct;
- (b) the allegation or charge is referred to the CEO by any Committee established under section 10(1) of the Act;
- (c) a Court to whom it appears that there is *prima facie* proof of improper conduct on the part of a registered accountant and auditor under the Act, or of conduct on the part of such a person which, regard being had to the profession of an accountant and auditor, is improper, directs that a record or report under section 27(3) of the Act be sent to PAAB; or
- (d) a member of the public lodges a complaint with PAAB and the CEO-
 - (i) establishes that the person complained about is a registered auditor and accountant;
 - (ii) establishes that the complaint falls within the jurisdiction of PAAB; and
 - (iii) is of the opinion that the complaint of improper conduct appears to be justified.

(3) A complaint referred to in this Rule, including an allegation or a charge referred by PAAB to the Investigations Committee of its own volition under this Rule must be deposed to in the form of an affidavit.

(4) A complaint must be lodged with the CEO or any other person appointed by PAAB for that purpose.

(5) A complaint must set out clearly and concisely the specific act or omission to act giving rise to the complaint of improper conduct and must set out in detail the facts upon which the complaint is based.

(6) The CEO may require a complainant to provide on affidavit further particulars concerning any aspect of the complaint.

(7) For purposes of this Rule, an “affidavit” means a sworn statement deposited to before a commissioner of oaths.

Investigation of a complaint or allegations of improper conduct

7. (1) In order to establish whether a complaint or allegation or charge of improper conduct is justified, the Investigations Committee may, in its discretion-

- (a) notify the respondent in writing of the nature of the complaint, allegation or charge and call upon that respondent to furnish a written explanation in answer to the complaint, allegation or charge within 30 days of such notice, provided that the Investigations Committee may extend the period of 30 days to no longer than 45 days, upon good cause shown by the respondent; and
- (b) request a complainant, if any, to provide further particulars on any aspect of the complaint.

(2) Upon receipt of a complaint, allegation or charge of improper conduct, and further particulars where these have been requested or furnished, the Investigations Committee may, where it is of the opinion that such complaint, allegation or charge does not disclose a *prima facie* case of improper conduct or where a complainant has neglected or refused to comply with the requirements of that Committee under these Rules, dismiss the complaint, allegation or charge and inform the complainant, if any, accordingly.

(3) Subject to subrule (4) where the Investigations Committee is of the opinion that a *prima facie* case of improper conduct on the part of a member is or may be made out, that Committee must investigate the complaint, allegation or charge and the Committee may-

- (a) take any steps which are not prohibited by law to gather information with regard to the complaint, allegation or charge;
- (b) request a complainant to provide further particulars on any aspect of the complaint, allegation or charge if the complainant, if any, has not already provided such further particulars under **subrule (1)(b)**;
- (c) request the respondent by notice specifying the date, time and place, to appear before the Investigations Committee in order to assist it to formulate its recommendations to the Board;
- (d) summon in accordance with section 28(2) of the Act in the form attached hereto as **PAAB1**, any person who in the Committee’s opinion may be able to give material information concerning the complaint, allegation or charge or who is believed to have in his, her or its possession or custody or under his or her or its control any book, document or thing which has any bearing on the subject of the complaint, allegation or charge, to appear before the Committee at a date, time and place specified in the summons, to be interrogated or to produce that book, document or thing, and retain for examination any book, document or thing so produced or make copies of and take extracts from such information; or
- (e) request PAAB to institute legal action against any person who fails to produce to the Investigations Committee the information referred to in **paragraph (d)** at the time and place stipulated in the summons.

(4) The notice referred to in **subrule (3)(c)** must inform the respondent that-

- (a) the respondent has the right to be assisted or represented by another person, including a legal practitioner;
 - (b) any statement made by the respondent to the Investigations Committee may be used in evidence and that the proceedings of that Committee will be recorded; and
 - (c) section 27(1)*bis* of the Act provides that a respondent upon whom a punishment is imposed under section 27(1) of that Act may be ordered to pay the reasonable costs incurred by the Investigations Committee in connection with an investigation and that a failure to appear before the Investigations Committee may increase the costs likely to be incurred by the Investigations Committee.
- (5) Notwithstanding the provisions of **subrule (3)**, the Investigations Committee and the respondent may agree to declare any appearance or part of an appearance of the respondent before the Committee to be “without prejudice”, in which case -
- (a) the evidence presented or the discussions at such appearance or part of the appearance will not be recorded;
 - (b) the discussions between the Investigations Committee and the respondent will not be used in evidence against the respondent; and
 - (c) the respondent and the Investigations Committee may agree that the respondent would not be assisted or represented by any other person.
- (6) The Investigations Committee is not obliged to disclose the source of a complaint.
- (7) If, in the course of the Investigations Committee’s investigations, the respondent admits to that Committee that the respondent is guilty of improper conduct-
- (a) and the Committee and the respondent consent that sanction to be imposed for such improper conduct would be a caution or reprimand or a fine not exceeding the maximum approved by the Minister, the Committee may issue a consent order imposing such sanction, whereupon the matter would be regarded as concluded: Provided that no consent order may be made in instances where a member-
 - (i) materially departed from relevant professional standards;
 - (ii) actions have resulted in actual loss or adverse impact on a client or a member of the public;
 - (iii) has abused trust or position;
 - (iv) has been dishonest;
 - (v) has continued improper conduct over a lengthy period of time;
 - (vi) actions have affected or had the potential to adversely affect a substantial number of clients or members of the public;
 - (vii) covered up or attempted or colluded to cover up improper conduct;
 - (viii) persistently denied improper conduct;
 - (ix) was previously found guilty of improper conduct; or

- (x) breached laws for which he or she could be criminally convicted;
- (b) but the Committee and the respondent do not agree to a sanction referred to in paragraph (a) or where the sanction would in all likelihood be different from the sanction referred to in that paragraph or it appears to the Committee to be appropriate, it must refer the matter to the Disciplinary Committee to convene a sentencing hearing in accordance with **Part 6** of these Rules.

(8) When, upon a consideration of the complaint, allegation or charge of improper conduct, together with the results of any investigations and the explanation of the member, if any, in response thereto, the Investigations Committee is of the opinion that an adequate answer to such complaint, allegation or charge has not been given, that Committee must formulate in writing a charge or charges of improper conduct and require such member to furnish the Committee with his or her answer to such charge or charges within a stipulated time.

(9) Upon receipt of the respondent's answer contemplated in **subrule (8)**, or where no answer is received within the stipulated time, on the basis of the facts before it, the Investigations Committee may-

- (a) recommend to the Board to dismiss the complaint, allegation or charge of improper conduct and to notify both the accountant and auditor and the complainant, if any accordingly; or
- (b) recommend to the Disciplinary Committee that a formal enquiry into the complaint, allegation or charge of improper conduct be held in accordance with **Part 4 and 5** of these Rules.

PART 4

THE DISCIPLINARY COMMITTEE, NOTICE OF HEARING, CHARGE SHEET AND PLEA

Disciplinary Committee

8. (1) The Board under section 10(2) of the Act hereby assigns to its Standing Committee known as the Disciplinary Committee the Board's powers to enquire into any complaint, allegation or charge of improper conduct, and to impose a punishment in respect thereof in accordance with the provisions of section 27 of the Act.

(2) The Disciplinary Committee is primarily responsible, in accordance with these Rules and such Terms of Reference that the Board may determine from time to time, for the hearing of any complaint, allegation or charge of improper conduct referred to that Committee by the Investigations Committee under **Rule 7(9)(b)**.

(3) In accordance with the provisions of section 10(2) of the Act, the Board is not entitled to amend or repeal any decision arrived at or anything done by the Disciplinary Committee under the powers assigned to it under **subrule (1)**.

Notice of disciplinary hearing

9. (1) When the Disciplinary Committee receives a recommendation referred to in **Rule 7(9)(b)** from the Investigating Committee, it must proceed to formally charge the respondent with improper conduct by causing a notice of disciplinary hearing and the charge sheet referred to in **Rule 12** to be furnished to the respondent (whether by service by a deputy-sheriff or on the respondent's legal representatives or otherwise) or by registered mail to the respondent's address or last known address.

(2) The notice of disciplinary hearing must inform the respondent of the time, date and place at which a hearing on the merits under **Part 5** or a sentencing hearing under **Part 6** (if applicable) will be conducted.

(3) Subject to **Rule 17(13)** and **Rule 18**, a hearing on the merits under **Part 5** or a sentencing hearing under **Part 6** must be conducted at such time, date and place as determined by the CEO.

(4) The notice must state:

(a) that, at a hearing on the merits under **Part 5** or a sentencing hearing under **Part 6** (if applicable), the respondent-

(i) may be assisted or represented by another person in conducting a defence;

(ii) has the right to be heard;

(iii) may call witnesses, including subject to **Rule 11** any expert witness;

(iv) must deliver a notice indicating the names of all prospective witnesses the party intends calling at least 30 days before the date of the hearing, together with a summary of the testimony of each witness;

(v) may cross-examine any person called as a witness by the *pro forma* prosecutor;

(vi) may have access to documents produced in evidence; and

(vii) may admit at any time before the conclusion of the disciplinary hearing on the merits under **Part 5** that the respondent is guilty of the charge or charges referred to the Disciplinary Committee despite the fact that the respondent denied such charge or charges or failed to admit or deny such charge or charges; and

(viii) will be regarded as guilty of the charge or charges to which the respondent admitted guilt under **paragraph (vii)**; and

(b) that the respondent must inform the CEO at least 21 days before the date for a hearing on the merits under **Part 5** or a sentencing hearing under **Part 6** (if applicable) is determined under **subrule (3)**, or on good cause shown, such shorter period as the CEO may determine, of the names, physical addresses and postal addresses of any witness or witnesses that the respondent wishes to give evidence at such hearing on the merits or sentencing hearing (if applicable).

Witness summons

10. (1) The CEO must in accordance with section 28(2) of the Act cause a witness summons in the form attached hereto as **PAAB2** to be served on any witness nominated by the respondent, the *pro forma* prosecutor or the Disciplinary Committee.

(2) The summons must be served in the same manner as a subpoena in a criminal case issued by a magistrate's court.

(3) The person at whose instance the summons is issued and served must pay the costs incurred in such issue and service of the summons.

Expert witnesses

11. (1) A party to any proceedings under these Rules is entitled to call an expert witness at a hearing subject thereto that such party provided written notice to the chairperson of the hearing and to any other parties thereto at least 30 days before the date of the hearing setting out-

- (a) the name of the expert, his or her field of expertise and qualifications;
- (b) a summary of such expert's opinion and reasons therefor; and
- (c) a notice by the expert which indicates that he or she honestly believes that the facts stated in his or her opinion are true.

(2) The Chairperson of the Disciplinary Committee may, in any cause or matter before him or her or it, direct that there be a meeting 'without prejudice' of the parties' experts after their expert summaries have been filed for the purpose of identifying those parts of their evidence which are in issue.

(3) Where a meeting referred to in subrule (2) takes place the experts must prepare a joint report indicating those parts of their evidence on which they agree and those on which they do not.

The charge sheet

12. (1) A charge sheet may contain more than one charge of improper conduct, whether formulated cumulatively or in the alternative.

- (2) The charge sheet must-
 - (a) set out the nature of the charge or charges;
 - (b) set out the relevant facts upon which the charge or charges are based with sufficient particularity as to allow the respondent to plead thereto;
 - (c) inform the respondent that the respondent may, by delivery of a plea, admit or deny the charge or charges;
 - (d) inform the respondent that the respondent may, together with the plea referred to in **paragraph (c)**, submit a written explanation regarding the charge or charges;
 - (e) inform the respondent of the date by which the respondent must admit or deny the charge or charges, which date must give the respondent a reasonable time (but not exceeding 30 days provided that the Disciplinary Committee may extend such period to not longer than 45 days, upon application and on good cause shown by the respondent) to respond;
 - (f) inform the respondent that-
 - (i) should the respondent not admit or deny the charge or charges by the date referred to in **paragraph (e)**, the respondent would be considered to have denied those charge or charges and that those charge or charges would be referred to a disciplinary hearing on the merits under **Part 5**; or
 - (ii) should the respondent deny the charge or charges, but fail to submit a written explanation, together with the denial, the charge or charges would

be referred to a disciplinary hearing on the merits under **Part 5** without such an explanation; and

- (g) inform the respondent that section 27(1)*bis* of the Act provides that a respondent upon whom a punishment is imposed under section 27(1) of that Act may be ordered to pay the reasonable costs incurred by the Disciplinary Committee if the matter is referred to for a hearing and that a failure to submit a plea under **paragraph (c)** or a written explanation under **paragraph (d)** may increase the costs likely to be incurred by the Disciplinary Committee.

Amendment of charge sheet prior to hearing

13. (1) The Disciplinary Committee may, on the application of the *pro forma* prosecutor or the respondent at any time after a charge sheet was furnished to a respondent under **Rule 9(1)** and before the commencement of a hearing on the merits under **Part 5** amend such charge sheet.

- (2) Amendments may include, but are not limited to, the addition or deletion of charges.

(3) An amendment to a charge sheet must be effected by furnishing an amended charge sheet that meets the requirements set out in **Rule 12(2)** and must be furnished to the respondent in the manner contemplated by **Rule 9(1)**.

(4) The Disciplinary Committee may further amend an amended charge sheet as provided for in **subrule (1)**.

(5) The provisions of **Rule 14** apply with the changes necessitated by the context to a respondent after receipt of an amended charge sheet even if the respondent has pleaded to the original charge sheet.

The plea and consequences of an admission or denial of guilt

14. (1) A respondent that is formally charged must in writing plead to all of the charges before or on the date referred to in **Rule 12(2)(e)**.

(2) Should the respondent not plead to the charge or charges before or on the date referred to in **Rule 12(2)(e)**, the respondent will be considered to have denied the charge or charges, which will be referred to a hearing on the merits under **Part 5**.

(3) If a respondent pleads guilty to the charge (should there be only one), or all the charges (if there were more than one) contained in the charge sheet, the respondent must notify the CEO.

(4) If a respondent pleads guilty to one or more, but not all, of the charges in the charge sheet (if there were more than one charge), the respondent must notify the CEO, clearly indicating in respect of which charge or charges the respondent admits or denies guilt.

(5) The respondent is considered to be guilty of that charge or charges to which the respondent pleaded guilty under **subrule (3)** and **subrule (4)**, and the CEO must convene a sentencing hearing under **Part 6** in respect of that respondent, in accordance with **Rule 9(3)**.

(6) If a respondent denies guilt to one or more of the charges in a charge sheet, any charge to which the respondent has denied guilt must be referred to the Disciplinary Committee for a hearing on the merits under **Part 5**, unless the charge sheet is amended by that Committee under **Rule 13(2)** to remove any charge to which the respondent denied guilt.

PART 5
DISCIPLINARY COMMITTEE HEARING ON THE MERITS

General

15. (1) The Disciplinary Committee may on good cause shown and in the interests of justice sanction or condone any departure from these Rules which is not prohibited by the Act.

(2) Unless any departure from these Rules or from the strict rules of evidence is raised at a hearing, it is not necessary for the Disciplinary Committee formally to sanction or condone such departure and such departure does not in and of itself invalidate any action or decision taken, or purportedly taken, under these Rules.

(3) If a respondent, who is formally charged with any charge of improper conduct on account of a recommendation by the Investigations Committee under **Rule 7(9)(b)**, does not in writing admit or deny the charge before or on the date referred to in **Rule 12(2)(e)** or should that respondent deny the charge (if there is only one) or one or more of the charges (if there are more than one), the CEO must refer any charge which was denied or to which the respondent did not plead, together with the respondent's plea and written explanation (if any) to the Disciplinary Committee for a hearing under this Part.

(4) Pursuant to a referral under **subrule (3)**, the CEO must, in his or her discretion appoint any person as the *pro forma* prosecutor to present the charge or charges to the Disciplinary Committee at the hearing on the merits under this Part.

(5) The *pro forma* prosecutor must be assisted, if necessary by one or more persons with relevant auditing or accounting experience.

Documents to be adduced in evidence

16. (1) The CEO must cause bundles of documents to be adduced in evidence in a hearing under this Part or a sentencing hearing under **Part 6** (if any) to be distributed to the members of the Disciplinary Committee, the respondent and the *pro forma* prosecutor.

(2) The bundles must comprise:

- (a) the notice and charge sheet sent to the respondent under **Rule 9**;
- (b) any plea and written explanation furnished by the respondent;
- (c) any documents which the *pro forma* prosecutor and the respondent may agree are admissible in evidence; and
- (d) at the discretion of the *pro forma* prosecutor, a certified copy of the record of the trial and conviction of the respondent by a Court if the respondent is charged with improper conduct which amounts to the offence of which the respondent was convicted, unless the conviction has been set aside on appeal by the respondent to a higher Court.

(3) Nothing in **subrule (2)** may prevent any evidence not included in the bundle referred to in that subrule from being adduced upon application and on good cause shown at a hearing on the merits under this Part or a sentencing hearing under **Part 6**.

The conduct of a hearing on the merits

17. (1) Should the respondent not be present on the date and at the place and time determined under **Rule 9(3)** for the hearing and is still not present within 30 minutes from the time set for the start of the hearing, a hearing on the merits under this Part or a sentencing hearing under **Part 6** (if any) may proceed in the respondent's absence if the Disciplinary Committee is satisfied that the notice and charge sheet referred to in **Rule 9(1)** were served on the respondent (whether by service by a deputy-sheriff or otherwise) or by registered mail.

(2) This Rule applies with the changes necessitated by the context to a hearing that proceeds in a respondent's absence.

(3) A respondent may only be absent from a hearing if the respondent has authorized another person in writing to represent the respondent at the hearing.

(4) Any application for a hearing or any part of such hearing, to be held *in camera* must be brought at the outset of the hearing unless the Chairperson of the Disciplinary Committee determines otherwise.

(5) Any witness at a hearing must give evidence after the Chairperson of the Disciplinary Committee or a person designated by him or her administered an oath or affirmation to such witness.

(6) The order of procedure at a hearing under this Rule is as follows:

- (a) The Chairperson of the Disciplinary Committee must read the notice and charge sheet referred to in **Rule 9(1)** to the respondent, unless the respondent agrees to dispense with the reading of such notice and charge sheet.
- (b) The Chairperson of the Disciplinary Committee must ask the respondent to confirm which of the charges set out in the charge sheet (or in the charge sheet as amended) the respondent admits or denies, provided that the Disciplinary Committee may not ask such confirmation with respect to any charge or charges that the respondent may have admitted under **Rule 14(3)** or **Rule 14(4)**.
- (c) The respondent will be considered to be guilty of any charge to which such respondent admits guilt under **paragraph (b)** whereupon the Disciplinary Committee must convene a sentencing hearing under **Part 6**.
- (d) If the respondent does not admit or deny the charge or charges when asked to do under **paragraph (b)** or, if it appears to the Chairperson that the respondent may be admitting the facts but not any charge, or if the respondent is not present at the hearing, the respondent must be considered to have denied such charge.
- (e) The *pro forma* prosecutor must state his or her case with regard to any charge denied under **paragraph (d)** and produce evidence in support thereof.
- (f) The respondent may cross-examine any witnesses produced by the *pro forma* prosecutor and must have access to any documents adduced in evidence by the *pro forma* prosecutor.
- (g) The *pro forma* prosecutor may re-examine any witnesses cross-examined by the respondent but only in respect of matters that arose during the cross-examination.
- (h) If, at the conclusion of the case presented by the *pro forma* prosecutor, the Disciplinary Committee is satisfied that the respondent has made out a *prima facie*

case in respect of the alleged improper conduct according to the rules of the law of evidence, the respondent must state his or her case with regard to any charge denied or deemed to have been denied under **paragraph (d)** and must produce evidence in support thereof.

- (i) The *pro forma* prosecutor may cross-examine any witnesses produced on behalf of the respondent (including the respondent if he or she has elected to give evidence) and must have access to any documents adduced in evidence by the respondent.
- (j) The respondent may re-examine any witnesses cross-examined by the *pro forma* prosecutor, but only in respect of matters that arose during the cross-examination.
- (k) At the conclusion of the case presented by the respondent-
 - (i) the *pro forma* prosecutor may address the Disciplinary Committee on the case generally;
 - (ii) the respondent may reply to the *pro forma* prosecutor; and
 - (iii) the *pro forma* prosecutor may reply to any new matter raised by the respondent.

(7) The Disciplinary Committee may not hear any further evidence from the *pro forma* prosecutor or from the respondent after the conclusion of their respective cases unless the interests of justice so dictates, in which case the provisions of **subrule (6)(e)** to **(k)** apply with the changes necessitated by the context.

(8) The Disciplinary Committee may, upon the application of the *pro forma* prosecutor or the respondent, at any time after the *pro forma* prosecutor started to state his or her case but prior to the conclusion of the hearing under this Part amend the charge sheet upon good cause shown by the applicant for such amendment., after which it may regulate its proceedings as it deems fit in the interests of justice, provided that the applicant may be ordered to pay any wasted costs incurred occasioned by such amendment or by any postponement occasioned by the amendment.

(9) The respondent may at any time after the *pro forma* prosecutor started to state his or her case under this Part admit guilt to any charge which was not previously admitted, whereupon that respondent will be considered to be guilty of such charge.

(10) If a respondent has admitted guilt to a charge under **subrule (9)** the Disciplinary Committee must convene a sentencing hearing under **Part 6**.

(11) The Disciplinary Committee may regulate its proceedings with respect to any remaining charge to which the respondent has not admitted guilt as it deems fit in the interests of justice.

(12) The *pro forma* prosecutor may, with the leave of the Disciplinary Committee, at any time after he or she started to state his or her case and prior to the conclusion of the hearing withdraw any charge against the respondent, in which case the Disciplinary Committee may regulate its proceedings with respect to any remaining charge as it deems fit in the interests of justice.

(13) The Disciplinary Committee may at any time after the commencement and before the conclusion of a hearing under this Part order the postponement of the remainder of such hearing to a date, time and place determined or to be determined in its discretion, provided that only members of the Disciplinary Committee present at the commencement of and during such hearing may take part in the remainder of the hearing.

(14) The Disciplinary Committee may at any time after the commencement and before the conclusion of a hearing under this Part call as a witness any person the evidence of whom that Committee considers material and who has not been called by the *pro forma* prosecutor or the respondent, in which event the Disciplinary Committee may regulate its proceedings with respect to the cross-examination of such witness and the right of the *pro forma* prosecutor or the respondent to address the Disciplinary Committee on the evidence given by such witness as it deems fit in the interests of justice.

(15) Any member of the Disciplinary Committee taking part in a hearing under this Part may, with the permission of the Chairperson of the Disciplinary Committee, put a question to any witness, the respondent (if such respondent elected to give evidence), the respondent's legal representative, if any, or the *pro forma* prosecutor.

(16) The Disciplinary Committee may, *in camera*, make any decision with regard to any matter arising in connection with, or in the course of a hearing under this Part.

Conclusion of hearing under this Part

18. (1) At the conclusion of a hearing under this Part, the Chairperson of the Disciplinary Committee must announce when and in which manner the Disciplinary Committee will inform the respondent of its finding as to the guilt or innocence of the respondent on any charge with which the Disciplinary Committee is still seized at the conclusion of such hearing, provided that the Disciplinary Committee may not reserve its finding for a period longer than 60 days.

(2) Nothing in **subrule (1)** precludes the Disciplinary Committee from informing the respondent of its finding at the conclusion of a hearing under this Part.

PART 6 SENTENCING HEARING

Application of Part

19. This Part applies when a respondent is found guilty of any charge of improper conduct on the basis of –

- (a) any admission of guilt by the respondent under these Rules; or
- (b) a finding of guilt by the Disciplinary Committee at the conclusion of a hearing on the merits under **Part 5**.

Sentencing hearing where respondent admitted guilt

20. (1) Where a respondent admitted guilt to any charge of misconduct against the respondent under these Rules, the CEO must convene a sentencing hearing under this Part at a date, time and place determined by the CEO by notice to the respondent and the members of the Disciplinary Committee.

(2) The CEO may appoint a *pro forma* prosecutor, in his or her discretion, to present any aggravating or mitigating circumstances to the Disciplinary Committee at a sentencing hearing.

(3) The *pro forma* prosecutor may be assisted, if necessary by one or more persons with relevant auditing or accounting experience.

Sentencing hearing when a hearing on the merits took place under Part 5

21. (1) The Disciplinary Committee must conclude a hearing on the sentencing of a guilty respondent in accordance with this Part at the same time that the respondent is found guilty after the conclusion of a hearing on the merits under **Part 5**.

(2) Notwithstanding **subrule (1)**, the Disciplinary Committee may upon application by the respondent or the *pro forma* prosecutor convene a sentencing hearing on a date and time and at a place determined by the Chairperson of the Disciplinary Committee.

(3) If the Disciplinary Committee postpones the hearing for sentencing under **subrule (2)**, such hearing may only take place with the members of the Disciplinary Committee who participated in such hearing under **Part 5**.

General power of Disciplinary Committee relating to a hearing under this Part

22. (1) The Disciplinary Committee may upon good cause shown and in the interests of justice sanction or condone any departure from these Rules which is not prohibited by the Act.

(2) Unless any objection to any departure from these Rules is raised at a hearing, it is not necessary for the Disciplinary Committee formally to sanction or condone such departure and such departure does not in and of itself invalidate any action or decision taken, or purportedly taken, under these Rules.

The conduct of the sentencing hearing

23. (1) If the respondent is not present at the date, place and time for the hearing determined under **Rule 20(1)** or **Rule 21(2)** and is still not be present within 30 minutes from the time set for the start of the hearing, the hearing under this Rule may proceed in the respondent's absence, provided that if the date, place and time for the hearing was determined under **Rule 20(1)**, such hearing may only proceed in the respondent's absence if the Disciplinary Committee is satisfied that the CEO caused service of the notice referred to in **Rule 20(1)** in accordance with that Rule on the respondent (whether by service by a deputy-sheriff or otherwise) or by registered mail.

(2) This Rule applies with the changes necessitated by the context to a hearing which proceeds in a respondent's absence.

(3) A respondent may only be absent from a hearing if the respondent has authorized another person in writing to represent the respondent at the hearing.

(4) Any application for a hearing or any part of such hearing, to be held *in camera* must be brought at the outset of the hearing unless the Chairperson of the Disciplinary Committee determines otherwise.

(5) Any witness at a hearing must give evidence after the Chairperson of the Disciplinary Committee or a person designated by him or her administered an oath or affirmation to such witness.

(6) The order of procedure at a hearing under this Part is as follows:

(a) The Chairperson of the Disciplinary Committee must read any charge of which the respondent is guilty, unless the respondent agrees to dispense with the reading of such charge.

(b) The *pro forma* prosecutor must state his or her case with regard to mitigating or aggravating circumstances in respect of any charge of which the respondent is guilty and may produce evidence, if any, in support thereof.

- (c) The respondent may cross-examine any witnesses produced by the *pro forma* prosecutor and must have access to any documents adduced in evidence by the *pro forma* prosecutor.
- (d) The *pro forma* prosecutor may re-examine any witnesses cross-examined by the respondent but only in respect of matters that arose during the cross-examination.
- (e) At the conclusion of the case presented by the *pro forma* prosecutor, the respondent must state his or her case with regard to any mitigating or aggravating circumstances in respect of any charge of which the respondent is guilty and may produce evidence in support thereof.
- (f) The *pro forma* prosecutor may cross-examine any witnesses produced on behalf of the respondent (including the respondent if he or she has elected to give evidence) and must have access to any documents adduced in evidence by the respondent.
- (g) The respondent may re-examine any witnesses cross-examined by the *pro forma* prosecutor but only in respect of matters that arose during the cross-examination.
- (h) At the conclusion of the case presented by the respondent-
 - (i) the *pro forma* prosecutor may address the Disciplinary Committee with respect to mitigating or aggravating circumstances;
 - (ii) the respondent may reply to the *pro forma* prosecutor; and
 - (iii) the *pro forma* prosecutor may reply to any new matter raised by the respondent.

(7) The Disciplinary Committee may not hear any further evidence from the *pro forma* prosecutor or from the respondent after the conclusion of their respective cases on mitigating or aggravating circumstances unless the interests of justice so dictates, in which case the provisions of **subrule (6)(b) to (h)** apply with the changes necessitated by the context.

(8) The Disciplinary Committee may at any time after the commencement and before the conclusion of a hearing under this Part order the postponement of the remainder of such hearing to a time, date and place determined or to be determined in its discretion, provided that only Committee members present at the commencement of and during such hearing may take part in the remainder thereof.

(9) The Disciplinary Committee may at any time after the commencement and before the conclusion of a hearing under this Part call as a witness any person the evidence of whom that Committee considers material and who has not been called by the *pro forma* prosecutor or the respondent, in which event the Disciplinary Committee may regulate its proceedings with respect to the cross-examination of such witness and the right of the *pro forma* prosecutor or the respondent to address the Disciplinary Committee on the evidence given by such witness as it deems fit in the interests of justice.

(10) Any member of the Disciplinary Committee taking part in a hearing under this Part may, with the permission of the chairperson of the Disciplinary Committee, put a question to any witness, the respondent (if such respondent elected to give evidence), the respondent's legal representative, if any, or the *pro forma* prosecutor.

(11) The Disciplinary Committee may, *in camera*, make any decision with regard to any matter arising in connection with, or in the course of a hearing under this Part.

Conclusion of hearing under this Part

24. (1) At the conclusion of a hearing under this Part, the Chairperson of the Disciplinary Committee must announce when and in which manner the Disciplinary Committee will inform the respondent of its finding as to the sentence of the respondent, provided that the Disciplinary Committee may not reserve its finding for a period longer than 30 days.

(2) Nothing in **subrule (1)** precludes the Disciplinary Committee from informing the respondent of its finding as to the sentence of the respondent at the conclusion of a hearing under this Part.

PART 7 SANCTIONS FOR IMPROPER CONDUCT

Sanctions

25. (1) If a respondent is found guilty of a charge of improper conduct, any of the following sanctions may be imposed with respect to each charge of which the respondent is found guilty, in accordance with section 21(1)(g)(i) of the Act-

- (a) a caution or reprimand;
- (b) a fine as approved by the Minister;
- (c) a suspension of the right to practice as a registered accountant and auditor for a specific period;
- (d) qualified, temporary or permanent disqualification for registration as an accountant and auditor; or
- (e) the cancellation of the registration of the respondent with the Board and the removal of the name of the respondent from the register.

(2) A sentence under **subrule (1)** may be suspended for a specific period or be made subject to any lawful conditions set in the sentence.

Publication of conviction

26. If a respondent is found guilty of a charge of improper conduct, an order made under **Rule 25** may include that:

- (a) the name of the respondent (with or without the name of the firm with which he or she is associated);
- (b) the charge against and finding in respect of the respondent; and
- (c) any other information that is considered appropriate,

must in accordance with section 21(1)(g)(ii) of the Act be published by the Board in the public press or in a journal or other publication referred to in section 21(1)(h)*bis* of the Act.

Costs

27. A respondent upon whom a sanction has been imposed under these Rules may, in accordance with section 27(1)*bis* of the Act be ordered by the Disciplinary Committee to pay such

reasonable costs as the Board may have incurred in connection with any investigation or hearing referred to in these Rules, or such part thereof as may be considered just.

Review

28. A respondent aggrieved by a decision of the Disciplinary Committee taken under **Part 5** or **Part 6** may review such decision by filing a review application in accordance with the Rules of the High Court made under the High Court Act, 1990 (Act No. 16 of 1990).

PART 8 GENERAL

Transitional provisions

29. (1) For purposes of this Rule, “effective date” means the date these Rules comes into operation in terms of **Rule 30**.

(2) Any investigation relating to a charge or allegation in respect of a member, which prior to the effective date was commenced with or which commenced but was not concluded must be finalised in terms of the provisions of these Rules.

(3) Where a disciplinary committee appointed before the effective date to hear an allegation or charge of improper conduct in respect of a registered accountant and auditor has commenced -

- (a) but no evidence on the merits of the charge or allegation has been led, such disciplinary committee must finalise such hearing in terms of the procedures set out in these Rules;
- (b) and evidence on the merits of a charge or allegation has been led, the disciplinary committee must finalise the hearing as if these Rules have not commenced.
- (c) where an allegation or charge of improper conduct has been made before the effective date in respect of a registered accountant and auditor but such hearing has not commenced, it must be heard and finalised by the Disciplinary Committee in terms of these Rules.

Commencement of Rules

30. These Rules come into operation on the date of publication in the *Gazette*.

**PAAB1
Summons to procure evidence
(Rule 7(3)(d))**

**PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD
*Subpoena Duces Tecum***

To: _____

YOU ARE HEREBY SUMMONED by the authority conferred on the undersigned by section 28 of the Public Accountants' and Auditors' Act, No. 51 of 1951 to appear at the Offices of the Public Accountants' and Auditors' Board at _____ and at _____ o'clock _____.m. on the _____ day of _____ 20__ in order to provide material information concerning a complaint, allegation or charge of improper conduct being investigated against _____.

YOU ARE FURTHER SUMMONED to bring with you the documents and/or objects specified in the attached Schedule.

YOU SHALL RESPOND to this Summons as directed unless excused by order of the Public Accountants' and Auditors' Board or any Committee of that Board.

Failure to appear or comply with the command of this Summons will subject you to the penalties provided by law.

If you need a special accommodation in order to attend because of a disability, please contact _____ at least five (5) days prior to the hearing.

ORDERED this _____ day of _____ 20____, at _____.

THIS SUBPOENA HAS BEEN ISSUED UPON THE REQUEST OF:

Name: _____
Address: _____
Phone: _____

Chief Executive Officer
Public Accountants' and Auditors' Board

PROOF OF SERVICE

I, _____, being over the age of 18 years, served the attached summons by delivering a copy to _____ at _____

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to any penalty provided by law.

SCHEDULE OF DOCUMENTS/OBJECTS TO BE PRODUCED

Description

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____
- 11. _____
- 12. _____
- 13. _____
- 14. _____
- 15. _____
- 16. _____
- 17. _____
- 18. _____
- 19. _____
- 20. _____
- 21. _____
- 22. _____
- 23. _____
- 24. _____

**PAAB2
Witness Summons
(Rule 10)**

**PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD
*Subpoena Ad Testificandum***

To: _____

In the disciplinary hearing of _____

YOU ARE HEREBY SUMMONED by the authority conferred on the undersigned by section 28 of the Public Accountants' and Auditors' Act, No. 51 of 1951 to appear at _____ to testify at the disciplinary hearing of _____ conducted by the Public Accountants' and Auditors' Board at _____ and at _____ o'clock _____m. on the _____ day of _____ 20__

YOU SHALL RESPOND to this Summons as directed unless excused by the party who requested issuance of the Summons or by order of the Public Accountants' and Auditors' Board or any Committee of that Board.

Failure to appear or comply with the command of this Summons will subject you to the penalties provided by law.

If you need a special accommodation in order to attend because of a disability, please contact _____ at least five (5) days prior to the hearing.

ORDERED this ___ day of _____ 20 __, at _____.

THIS SUBPOENA HAS BEEN ISSUED UPON THE REQUEST OF:

Name: _____
Address: _____
Phone: _____

Chief Executive Officer
Public Accountants' and Auditors' Board

PROOF OF SERVICE

I, _____, being over the age of 18 years, served the attached summons by delivering a copy to _____ at _____

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to any penalty provided by law.
