

BILL

To provide for the continued existence, composition, and functions of the Public Accountants and Auditors Board as the Accountants' and Auditors' Regulatory Authority; to provide for accreditation of professional bodies; to provide for the registration of auditors, professional accountants and accounting technicians; to prohibit registered auditors, registered professional accountants or registered accounting technicians to practise without obtaining a certificate to practise; to prescribe rules relating to the practice and accountability of registered auditors, registered professional accountants or registered accounting technicians; to provide for the discipline of registered auditors, registered professional accountants or registered accounting technicians; 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” 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 prescribed by the Board;

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

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

- (a) registered auditors;
- (b) registered professional 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 audit 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 recognized financial reporting framework;
- (b) financial or other information, prepared in accordance with audit 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 pronouncements” means those practice statements, guidelines, directives and circulars developed, adopted, issued or prescribed by the Board which a registered auditor must comply with in the performance of an audit and may incorporate pronouncements on auditing issued by the IAASB;

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

“audit development programme” refers to a programme of specialisation approved by the Board which a person must undertake for a period prescribed by the audit standards to become a registered auditor;

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

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

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

“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 professional accountant, registered accounting technician or firm;

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

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

“firm” means a sole proprietor, partnership, close corporation or company registered under **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;

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

“international standards” means international professional standards, rules or regulations issued by or under the auspices of IASB, IFAC or IAASB;

“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 day-to-day management of the business of such entity;

“Minister” means the Minister responsible for finance;

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

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

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

“registered accounting technician” means a person qualified to offer for hire or reward accounting services, and to whom the Authority issued a certificate to practise as registered accounting technician under **Part 8**;

“registered auditor” means a person qualified to offer for hire or reward audit and accounting services, and to whom the Authority issued a certificate to practise as a registered auditor under **Part 8**;

“registered professional accountant” means a person qualified to offer for hire or reward accounting services, and to whom the Authority issued a certificate to practise as registered professional accountant under **part 8**;

“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 95**;

“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;

“trainee accounting technician” means a person registered by an accredited professional 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**;

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

“training contract” means a written contract of training in the form prescribed by the Board, which is registered with the Authority whereby a trainee auditor, trainee professional accountant or trainee accounting technician agrees to serve under the pupillage of a training officer for the period prescribed by the Board in order to receive training in the practice and profession of a registered auditor, registered professional accountant or registered accounting technician, as the case may be;

“training officer” means-

- (a) a registered auditor to provide training to a trainee auditor; or
- (b) a registered professional accountant to provide training to a trainee professional accountant; or
- (c) a registered accounting technician to provide training to a trainee accounting technician, under a training contract; and

“unprofessional conduct” means improper or dishonourable or unworthy 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 professional 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 professional body;
 - (c) to provide for the registration of auditors, professional 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 and notwithstanding the repeal of the repealed Act by this Act, the Public Accountants' and Auditors' Board established by section 2 of the repealed Act, continues to exist, subject thereto that it is to be known as the Accountants' and Auditor's Regulatory Authority.

(2) The Authority is a juristic person which is capable, in its own name, of suing and of being sued and, subject to the provisions of 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 100(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, economics, law or other related fields of expertise, but not all appointees must be of the same gender.

(3) Disregarding any vacancy in its membership, the Board must have no more than-

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

(4) When making the appointments, the Minister must take into consideration, 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 Board members.

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

- (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.

Term of office of Board members

5. (1) Despite any other law, the term of office of a Board member is three years from the date of his or her appointment and he or she may be reappointed on expiry of such term: Provided that if on expiry of a Board member term of office, the member was not

reappointed or a successor has not been appointed, he or she must continue to hold office for a further period not exceeding four months.

(2) A Board member whose term of office expires is eligible for re-appointment for not more than a further 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 members reappoint at least three members appointed in terms of **section 4(1)**.

Disqualification for membership of Board

6. (1) A person is not qualified for appointment as a Board member if that person-

- (a) has been convicted of an offence, other than a political offence committed before the date of Independence of Namibia, in any country and sentenced to a term of imprisonment without the option of a fine;
- (b) has been removed from an office of trust on account of being dishonest;
- (c) has been declared as mentally ill under any law relating to mental health;
- (d) is an unrehabilitated insolvent;
- (e) 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
- (f) has under this Act been found guilty of unprofessional conduct.

(2) A person is ineligible for appointment to the Board if that person is-

- (a) a member of Parliament or a regional or local authority council;

- (b) is not a Namibian citizen or a permanent resident in Namibia; or
- (c) is not resident in Namibia;

Vacation of office and filling of vacancies

7. (1) A Board member vacates his or her office if the member-

- (a) becomes disqualified or is ineligible for appointment under **section 6**;
- (b) resigns his or her office by giving the Minister a written 30 days' notice of his or her intention to resign;
- (c) is absent for more than three consecutive meetings of the Board without the leave of the chairperson of the Board; or
- (d) is removed from office by the Minister under subsection (2).

(2) The Minister, by notice in writing, may remove a Board member from office if the Minister, after giving the member a reasonable opportunity to be heard, 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) Whenever the office of a Board member becomes vacant, the Minister must, subject to **sections 4, 5 and 6**, appoint a person as a Board member for three years.

Chairperson and deputy chairperson

8. (1) Board members appointed under **section 4** must, at their first meeting following their appointment, out of their number elect a chairperson and deputy chairperson of the Board.

(2) If the chairperson or deputy chairperson of the Board vacates office before the expiration of the period for which he or she was appointed as a Board member, another such member, subject to the provisions of subsection (1), 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 for any reason 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 in respect of his or her service as Board or committee member, as the case may be as the Minister may determine.

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

Meetings of Board

10. (1) The first meeting of the Board must be held at such time and place as the Minister may determine, and subsequent meetings of the Board may be held at such time and place as the Board or its chairperson may determine, but the Board must meet at least once in three months.

(2) The chairperson-

(a) may at any time;

(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.

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

(5) 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.

(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 authorized 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 the meetings, 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.

Delegation and assignment of powers and functions by Board

13. (1) 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 system developed under subsection (1) in writing -

(a) delegate appropriate powers, excluding the power to prescribe, to an accredited professional 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) 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) In accordance with the delegation framework, the Board will confirm, or may vary or revoke any decision taken by a committee, the chief executive officer, a Board member or an employee as a result of a delegation or assignment under subsection (2).

OBJECTIVES, FUNCTIONS AND POWERS OF AUTHORITY

Objectives of Authority

14. The objectives of the Authority are-
- (a) to regulate the reporting of financial information and to provide direct oversight over registered persons and accredited professional 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 to the highest professional standards;
 - (iii) to enhance the credibility of financial reporting;
 - (iv) to promote the quality, integrity, competency and transparency of accounting and auditing services;
 - (v) ensure that the interests of all stakeholders are safeguarded; and
 - (vi) adopt and ensure compliance with and the enforcement of applicable local and international accounting and audit standards;
 - (vii) to promote high standards of compliance with professional ethics; and
 - (viii) to encourage effective collaboration with other applicable regulators both nationally and internationally;
 - (b) to regulate the accounting and auditing professions;
 - (c) to 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;

- (d) to promote the standard, quality and credibility of the accounting and auditing professions in Namibia; and
- (e) to monitor and adopt international best practice for the development of the accounting and auditing professions.

General functions and powers of the Authority

15. (1) The Authority may subject to any budgetary constraints and its procedures for approval-

- (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) appoint Board committees referred to in **Part 5**;

- (h) establish and administer such systems or schemes as the Board may consider necessary or expedient for the discharge of its functions;
 - (i) develop and maintain effective working relationships with Government and with other national, regional and international accounting and auditing bodies;
 - (j) make appropriate arrangements for cooperation with regulatory bodies similar to the Board to obtain or communicate information on matters that are beneficial to the accounting and auditing professions;
 - (k) on its own or in collaboration with accredited professional bodies or other institutions, design awareness programs on the importance of compliance with accounting and auditing requirements;
 - (l) encourage cooperation between the Authority and accredited professional bodies in matters of common interest; and
 - (m) do anything which is necessary or expedient to perform its functions or to promote the objects of this Act.
- (2) The Authority must-
- (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.

Functions with regard to accreditation of professional bodies

16. (1) Subject to this Act, the Board must-
- (a) prescribe 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) prescribe the period of validity of the accreditation which may not be less than five years;
 - (d) keep and maintain a register of accredited professional bodies in accordance with **section 51**; and
 - (e) terminate the accreditation of accredited professional bodies.

(2) The Board may intervene in the affairs of a professional body under prescribed circumstances which intervention may include the power to-

- (a) call 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

Functions with regard to education, training and professional development

17. (1) The Board–

- (a) must recognize by notice in the *Gazette* tertiary institutions or accredited professional bodies that may provide academic and theoretical training for persons desirous of becoming registered auditors, registered professional accountants or registered accounting technicians;
- (b) must after consultation with any tertiary institution or accredited professional body responsible to provide education or training for persons desirous of becoming registered auditors, registered professional accountants or registered accounting technicians, 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 such persons;
- (c) must prescribe qualifying examinations-
 - (i) that trainee auditors must undertake; or
 - (ii) that accredited professional bodies must cause trainee professional accountants or trainee accounting technicians to undertake,

to assess their competence for registration under this Act.

- (d) subject to subsection (4) may fully or partially -
 - (i) withdraw the recognition of any tertiary institution or accredited professional body referred to in subsection (a) to provide education or training for persons desirous of becoming registered auditors, registered professional accountants or registered accounting technicians; or
 - (ii) withdraw the right of any accredited professional body to conduct the examinations referred to in paragraph (c)(ii);

- (iii) withdraw the approval of a training officer; or
 - (iv) recognize or withdraw the recognition of educational qualifications, educational programmes or continued education, training or professional development programmes for registered persons and persons desirous of becoming registered auditors, registered professional accountants or registered accounting technicians;
- (e) prescribe minimum training requirements that a trainee auditor, trainee professional accountant or trainee accounting technician must meet to qualify for registration under this Act;
- (f) prescribe the form and content of training contracts;
- (g) register training contracts entered into by trainee auditors, trainee professional 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;
- (h) oversee, monitor and supervise the qualifications and selection of training officers;
- (i) review and approve the requirements for, and oversee, monitor and supervise the content, structure and delivery of continuing education, training and professional development programmes for registered auditors, registered professional accountants or registered accounting technicians; and
- (j) moderate and evaluate examinations referred to in paragraph (c)(ii) 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 professional accountant or trainee accounting technician, approved by the accredited professional body responsible for the training of such trainee professional accountant or trainee accounting technician after consultation with the Board.
- (3) The Board may-
- (a) establish mechanisms for registered auditors, registered professional 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 professional body and any person or body of persons, within or outside Namibia, with regard 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 auditors, registered professional accountants, registered accounting technicians and 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 professional body or examining body with regard to educational facilities for and the education, training and professional development of registered auditors, registered professional accountants, registered accounting technicians, or persons desiring to become registered auditors, registered professional accountants or registered accounting technicians.
- (4) The Board must-

- (a) before it withdraws the recognition or approval of any person referred to in subsection (1)(d) give notice in writing to the person concerned of its intention to withdraw such recognition and the reasons on which it is based; and
 - (b) afford the person concerned a period of not more than 30 days in which to submit grounds for not proceeding with the withdrawal.
- (5) If the Board after considering any submissions referred to in subsection (4)(b) believes-
- (a) that the withdrawal of recognition of any person referred to subsection (1)(d) would not be in the best interests of the public, the auditing and accounting professions or the members of an accredited professional body, the Board may continue to recognize those concerned on such conditions as it considers appropriate;
 - (b) that there is no basis upon which to continue recognizing such person, the Board must withdraw such recognition or approval and inform the person concerned accordingly.
- (5) The Board must publish in the manner it deems most appropriate –
- (a) the names of every tertiary institution recognised, or professional body accredited, under this Act;
 - (b) the withdrawal of any recognition or approval referred to in subsection (1)(d).

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

18. Subject to this Act, the Board-

- (a) may prescribe competency standards and requirements for registration of auditors, professional 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

- 19.** The Board must –
- (a) in accordance with this Act, prescribe 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 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) prescribe guidelines and rules to govern quality assurance programmes, 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 prescribed by the Board;
- (h) issue auditing pronouncements;
- (i) solicit and submit comments on draft international standards and other pronouncements of IASB, IAASB or IFAC, as the case may be, and otherwise meaningfully contribute to their standard-setting activities.

Functions of the Board with regard to discipline

- 20.** The Board must-
- (a) in accordance with **section 74(1)(a)** prescribe and periodically review a code of professional conduct and ethics for registered persons, which must be consistent with and contain all the principles on the subject issued by IASB, IAASB or IFAC, as the case may be;
 - (b) in accordance with the rules prescribed under **section 74(1)(b)** establish investigation and disciplinary procedures in respect of registered persons;
 - (c) where necessary coordinate with or refer any disciplinary proceedings against a registered professional accountant or registered accounting technician to the relevant accredited professional 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 professional body;
 - (e) impose sanctions specified or prescribed under this Act.

Functions with regard to fees and charges

- 21.** (1) The Board must prescribe-
- (a) fees for accreditation, registration and the issue of certificates to practise;
 - (b) the annual fee referred to in **section 58**, or a portion thereof in respect of a part of a year; and
 - (c) the date on which any fee is payable.
- (2) The Board may prescribe –
- (a) any fees payable for the purposes of the education fund referred to in **section 17(3)(c)**;
 - (b) fees payable for a practice review undertaken by the inspection and quality assurance committee under Part 11; and
 - (c) fees payable for any other service rendered by the Board.
- (3) The Board may on good cause shown grant exemption from 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 in accordance with the eligibility requirements of **section 6** and subject to section 17 of the Public Enterprises Governance Act, appoint a suitable person-

- (a) to be the 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-

(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,

must determine.

(3) The Board must enter into a ` 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 accountable solely and directly to the Board in respect of-

- (a) the implementation of the decisions, policies and programmes 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) subject to **section 24**, to appoint and dismiss the staff of the Authority;
 - (b) to organize, control and maintain staff discipline;

- (c) to form and develop an efficient and effective system of administration;
- (d) to effectively deploy and utilize staff to achieve maximum operational results;
- (e) to sign contracts with the approval of the Board; and
- (f) 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, programmes and policies of the Authority,

representing fairly the financial state of affairs and business of the Authority.

(5) The chief executive officer must attend meetings 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 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 to serve as individual expert advisers as may be useful or appropriate to enable the Board to discharge its functions.

PART 5 COMMITTEES OF BOARD

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) exercise or perform any power or function that the Board may delegate or assign to such committee,

subject to such conditions as the Board may prescribe by way of committee charters 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 committee; and
 - (g) disciplinary committee.
- (3) A committee established under subsection (1) or (2)-
- (a) must consist of at least two Board members 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.
- (4) For each committee, the Board must designate a Board member as chairperson of the committee.
- (5) The members of a committee hold office on such terms and conditions as the Board may determine.
- (6) 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.
- (7) 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 no longer complies with **section 6**;

- (b) the performance by the member of the powers and functions of that committee is unsatisfactory;
- (c) the member, either through illness or for any other reason, is unable to perform the functions of the committee effectively; or
- (d) the member has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.

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

(9) Subject to any direction given by the Board, a committee appointed under this section may regulate its own procedure.

(10) 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.

Education, training and professional development committee

27. In addition to the functions prescribed by the committee charters referred to in **section 26(1)** 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 professional accountants and trainee accounting technicians).

Registration and accreditation committee

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

Ethics committee

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

- (a) to determine what constitutes unprofessional conduct by registered persons by developing 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 professional body must issue in respect of its members;
- (c) to interact on any matter relating to its functions and powers with accredited professional bodies and any other body or organ of state with an interest in the accounting or auditing profession; and
- (d) to provide advice to accredited professional bodies or registered persons on matters of professional ethics and conduct.

Standards committee

30. In addition to the functions prescribed by the committee charters referred to in **section 26(1)**, 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 adopt international standards applicable to the accounting and auditing professions in Namibia;
- (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 professional bodies on the direction and appropriateness of auditing pronouncements.

Inspection and quality assurance committee

31. In addition to the functions prescribed by the committee charters referred to in **section 26(1)**, the inspection and quality assurance committee must -

- (a) conduct or supervise periodic practice reviews; and
- (b) determine, when conducting or supervising a practice review, whether-
 - (i) a registered person 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 professional body complies with this Act.

Investigation committee

32. (1) In addition to the functions prescribed by the committee charters referred to in **section 26(1)**, the rules prescribed in accordance with **section 74(1)(b)** and

subject to this Act, the investigation committee must investigate allegations of unprofessional conduct involving registered persons or contraventions of the Act by accredited professional bodies.

(2) The investigation committee must consist of suitably qualified persons appointed by the Board of which the majority may not be registered persons.

Disciplinary committee

33. (1) In addition to the functions prescribed by the committee rules referred to in **section 26(1)**, and the rules referred to in **section 32(1)** 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 prescribed in those rules.

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

(3) The disciplinary committee consists of other suitably qualified persons appointed by the Board of which the majority may not be registered persons.

PART 6

FINANCES OF AUTHORITY

Funds of Authority

34. (1) The funds of the Authority consist of -

- (a) money appropriated by Parliament to achieve the objects of this Act;
- (b) fees prescribed by the Board under this Act;
- (c) donations or grants made for the benefit of the Authority;

- (d) interest derived from investments made under subsection (5);
- (e) money received as loans or grants with the prior approval of the Minister;
- (f) any fine paid to the Authority under **section 83(1)(h)**; and
- (g) 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 and by observing the measures implemented to protect the liquidity of the Authority.

(3) The Authority must use its funds for the purpose of defraying expenses incurred in connection with the exercise of its powers and the performance of its duties and functions.

(4) All moneys received under this Act for the benefit of the Authority must be paid into the bank accounts contemplated 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 accounts of Authority

35. (1) The Authority must open and maintain any number of bank accounts (one of which must be designated as the Authority's main bank account) that are necessary for the performance of the functions of the Authority at one or more banking institutions in Namibia registered under the Banking Institutions Act, 1998 (Act No. 2 of 1998) or at the Post

Office Savings Bank as defined in section 1 of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992).

- (2) The chief executive officer must ensure that-
 - (a) all money received by or on behalf of the Authority is deposited into its main bank account as soon as practicable after being received;
 - (b) any payment by or on behalf of the Authority is made from its main bank account; and
 - (c) money is not withdrawn, paid or transferred from any of its bank accounts unless provided for in the Authority's approved budget or with the approval of the Board.

Financial year, accounts and audit of Authority

36. (1) The financial year of the Authority is a period of 12 months which ends on 31 December of every year.

(2) The Authority must cause records of account to be kept in accordance with an accepted form of the International Financial Reporting Standards as are necessary-

- (a) to represent fairly the state of affairs and business of the Authority; and
- (b) to explain the transactions and financial position of the Authority.

(3) 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 programme.

(4) Within four months after the commencement of each financial year of the Authority, the chief executive officer must prepare or cause the preparation of and submit to the Board for approval, audited financial statements, comprising-

(a) a statement, with suitable and sufficient particulars, reflecting the income and expenditure of the Authority during the preceding financial year; and

(b) a balance sheet showing the state of the assets, liabilities and financial position of the Authority as at the end of the preceding financial year.

(5) The accounting records and the financial statements of the Authority must be audited annually by the Auditor-General subject thereto that the Auditor-General may appoint any independent registered auditor to perform such audit.

Reports to and meetings with Minister

37. (1) The Board must, no later than six months after the end of each financial year submit to the Minister an annual report of the Authority in respect of that financial year.

(2) The annual report must contain the information referred to in section 22 of the Public Enterprises Governance Act.

(3) 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.

(4) 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.

(5) 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.

(6) The 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.

PART 7

ACCREDITATION OF PROFESSIONAL BODIES

Application for accreditation

38. (1) A professional body (in this Part referred to as “an applicant”) desiring to be accredited must, on the application form prescribed by the Board, apply to the Authority for accreditation.

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

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

General requirements for accreditation

39. In order to qualify for accreditation, an applicant must, to the satisfaction of the Board demonstrate that the applicant-

- (a) complies with the requirements prescribed by the Board for the education, training, and professional development, and the achievement of professional competence by its members;
- (b) has appropriate mechanisms for ensuring that its members participate in continuing professional development as recognised or prescribed by the Board;

- (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 and to investigate and discipline its members for unprofessional conduct;
- (d) has mechanisms to ensure that its members are disciplined, and is likely to be financially and operationally viable for the foreseeable future;
- (e) will have a register of its members in the form prescribed by the Board;
- (f) has in place appropriate programmes and structures to ensure that it is actively endeavouring to achieve the objective of being representative of all sectors of the Namibian population; and
- (g) will be able to meet any other requirement prescribed by the Board.

Retaining accreditation

40. In order to retain its accreditation, an accredited professional body must at least once every five years in the form and manner prescribed by the Board, satisfy the Board that such professional 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 professional body lapses automatically if that body ceases to exist or if it fails to pay any fee prescribed by the Board or portion thereof within the period prescribed by the Board.

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

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

(b) an order to that effect is made by the disciplinary committee under **section 87(1)(f)**.

(3) The Board must prior to cancelling the accreditation of an accredited professional body under subsection (2)(a) -

(a) give notice in writing to the accredited professional body concerned of its intention to cancel its accreditation and the reasons therefor; and

(b) afford the accredited professional body a period of not more than 30 days in which to submit grounds for not proceeding with the cancellation.

(4) The Board may, pending the outcome of the process contemplated in subsection (3), suspend the accreditation of an accredited professional body if the Board considers it in the best interests of the public or the accounting and auditing professions and may make such alternative arrangements to accommodate the needs of the members of such body during the period of suspension as it considers necessary.

(5) If the Board considers that the cancellation of accreditation of an accredited professional body would not be in the best interests of the public, the accounting and auditing professions or the members of an accredited professional body the Board may extend the accreditation of that professional body on such conditions as the Board considers appropriate.

(6) An accredited professional body may by written notice to the Board renounce its accreditation.

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

(a) of the cancellation of that professional body's accreditation; and

- (b) that under **section 42** the members have the duty to provide the Board with written proof that they must become members of another accredited professional body.

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

Effect of cancellation of accreditation on registered person

42. (1) The cancellation of accreditation of an accredited professional body does not affect the registration under this Act of any registered auditor, registered professional accountant, registered accounting technician or firm which was a member of that professional body.

(2) A registered auditor, registered professional accountant, registered accounting technician or firm referred to in subsection (1) must, within six months of the cancellation of the accreditation of the professional body concerned or within such other period as may be prescribed by the Board, provide written proof to the satisfaction of the Board that he or she has become a member of another accredited professional body.

(3) Where such registered auditor, registered professional accountant, registered accounting technician or firm fails to comply with the requirements of subsection (2), the Board may, subject to subsection (4), cancel his or her registration.

(4) The Board must, prior to the cancellation of the registration of such registered auditor, registered professional accountant, registered accounting technician or firm-

- (a) give notice in writing to the person concerned of the Board's intention to cancel his or her registration and the reasons therefor; and
- (b) afford the person a period of not more than 30 days in which to submit grounds for not proceeding with such cancellation.

PART 8
REGISTRATION OF ACCOUNTING TECHNICIANS, PROFESSIONAL
ACCOUNTANTS AND AUDITORS

Definitions

- 43.** For purposes of this Part-
- (a) “applicant” means an individual who applies for registration under this Part and may be a trainee accounting technician, trainee professional accountant, trainee auditor, registered accounting technician, registered professional accountant or registered auditor, as the case may be;
 - (b) “member in good standing” means a member of an accredited professional body or similar body in a foreign country who-
 - (i) does not owe any membership fees or other dues to that professional body or similar body;
 - (ii) is not subject to a disciplinary proceeding by the Authority or by that professional body or similar body; and
 - (iii) complies with the continuing professional development requirements.

Registration of individual as trainee professional accountant or trainee accounting technician

44. (1) An applicant desiring to be registered as a trainee accounting technician or trainee professional accountant, as the case may be must in writing lodge with an accredited professional body of which he or she desires to become a member, an application in the form, containing the information and accompanied by the fee, prescribed by the Board.

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

- (a) is ordinarily resident in Namibia;
- (b) is in possession of the academic qualifications or otherwise meet the entry requirements prescribed by the training regulations;
- (c) subject to **section 17(2)(b)**, will enter into a training contract with a training officer; and
- (d) complies with any other requirements prescribed by the training regulations,

the accredited professional body must, subject to **section 52(1)** give written approval in the form prescribed by the Board to the applicant to commence with his or her training under the training contract.

Registration of individual as accounting technician

45. (1) An applicant desiring to be registered as an accounting technician must in writing lodge with the Authority an application in the form, containing the information and accompanied by the fee, prescribed by the Board.

(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;
- (a) has passed the final professional examinations of an accredited professional body or otherwise meets the requirements for membership of such professional body;
- (b) has satisfactorily completed training under a prescribed training contract;
- (c) is a member in good standing of an accredited professional body;

- (e) is in possession of a certificate of compliance with the requirements for continued professional development of such professional body; and
- (f) complies in all respects with the training regulations,

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 professional accountant

46. (1) An applicant desiring to be registered as a professional accountant must in writing lodge with the Authority an application in the form, containing the information and accompanied by the fee, prescribed by the Board.

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

the Board must, subject to **section 52(1)** register the applicant as a registered professional 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 trainee auditor

47. An applicant desiring to be registered as a trainee auditor must in writing lodge with the Authority an application in the form, containing the information and accompanied by the fee, prescribed by the Board.

(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 academic qualifications prescribed by the training regulations;
- (c) subject to **section 17(2)(a)** has entered into a training contract with a training officer to complete the audit development programme prescribed by the training regulations; and
- (d) complies with any other requirements prescribed by the training regulations,

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

Registration of individual as auditor

48. (1) An applicant desiring to be registered as an auditor must in writing lodge with the Authority an application in the form, containing the information and accompanied by the fee, prescribed by the Board.

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

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 a registered auditor or registered professional accountant or registered accounting technician

- 49.** (1) An applicant who has been practising in a foreign country as-
- (a) an auditor,
 - (b) a professional accountant; or
 - (c) an accounting technician,

who was duly registered as such with a registering authority similar to the Authority and who desires to be registered as a registered auditor, registered professional accountant, or registered accounting technician, as the case may be, must in writing lodge with the Authority an application in the form, containing the information and accompanied by the fee, prescribed by the Board.

(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 organized body of auditors, professional 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, a professional accountant or an accounting technician in that country, as the case may be;
- (d) is a member of an accredited professional body; 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 professional accountant, or registered accounting technician, as the case may be, 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, professional accountant or accounting technician, require the person to complete examinations, undergo practical training or be subjected to interviews that the Board deems appropriate.

Registration of firms as registered auditors, registered professional accountants or registered accounting technicians

50. (1) A firm that may be registered as an auditor, professional accountant or accounting technician is-

- (a) a sole proprietor where that person is a registered auditor, registered professional accountant or registered accounting technician;
- (b) a partnership of which all the partners comprise-
 - (i) only registered auditors;
 - (ii) only registered professional accountants;
 - (iii) only registered accounting technicians; or
 - (iv) a combination of registered professional accountants, registered accounting technicians or registered auditors, provided that such auditors may not perform any audit as part of such partnership;
- (c) a company which complies with **section 51**.

(2) On application in the form, containing the information and accompanied by the fee, prescribed by the Board, of a firm which is-

- (a) a sole proprietor; or
- (b) a partnership fulfilling the conditions in subsection (1)(b),

the Board must subject to **section 52(2)** register the firm as either a registered auditor or registered professional accountant, or registered accounting technician issue to such firm 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 company as registered auditor or registered professional accountant

51. (1) The Board may on application in the form, containing the information and accompanied by the fee, prescribed by the Board register a private company as a registered auditor or registered professional accountant and issue to the company a certificate to practise if-

- (a) that company is incorporated and registered as a private company under the Companies Act, 2004 (Act No. 28 of 2004), 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 professional accountants or 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 as from the date on which he or she dies, ceases to so conform, is disqualified or his or her registration is cancelled, continue 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 authorized 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 appoint only 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 recognized in law as a registered auditor or registered professional accountant.

(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 professional accountant.

(10) Any reference in this Act or in any other law to a registered auditor or registered professional accountant or to a partner or partnership in relation to registered auditors or registered professional 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 professional accountant, trainee auditor, registered accounting technician, registered professional 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 on account of misconduct;
- (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) he or she has been certified either inside or outside Namibia to be of unsound mind under the Mental Health Act, 1973 (Act No. 18 of 1973) or an equivalent law in a foreign country, and the certification remains in force;
- (e) is disqualified for registration in terms of a punishment imposed under this Act;
- (f) he or she has been declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged;
- (g) 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 as a registered auditor, registered professional accountant, or registered accounting technician as the case may be, 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 that person a reasonable opportunity to make representations on the matter; 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, prescribed by the Board.

(2) A certificate to practise must contain the membership number of the registered person and identify the accredited professional 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 period of five years and may be renewed on application in the form and manner prescribed by the Board.

Prohibition on holding out or practising as a registered auditor, registered professional accountant or registered accounting technician unless registered

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

(2) A person which 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 he, she or it is a registered person;
- (d) use the designation or initials referred to in **section 57** or any other name, title, description or letters indicating that he, she or it is a registered person, whether by advertisement or description or in any document.

(3) A person who contravenes or fails to comply with subsection (1) or (2), commits an offence and is liable on a first conviction to a fine not exceeding N\$50,000 or to imprisonment for a period not exceeding five 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\$100 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

- (4) Subsection (1) or (2) 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) or (2) 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 voluntary organisation.

Register of registered persons and accredited professional 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 professional accountants;
- (c) register of registered accounting technicians;
- (d) register of firms;
- (e) register of accredited professional bodies; and
- (f) any other register, by whatever name the Board may designate, containing particulars as may be prescribed 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 professional 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 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 that may be prescribed by the Board 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 fee prescribed by the Board.

(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\$15,000.

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 professional accountant is entitled to use the designation “Registered Professional Accountant (Namibia)” or the initials “R.P. Acc.(Nam)”.

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

(4) This section does not preclude the member of an accredited professional 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 Board to the Authority.

(2) The Board 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 professional body;
 - (ii) otherwise ceases to be a member of an accredited professional 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 professional 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 or will probably be instituted against the person, 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 as a registered auditor or registered professional accountant automatically lapses if the firm no longer complies with **section 50(1)**.

(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\$50 000 or to imprisonment

for a period not exceeding five years 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\$100 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Restoration of name to register

61. (1) Where the name of a registered auditor, registered professional 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 professional body concerned informs the Board that such auditor, professional accountant or accounting technician has had his or her membership of such professional 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, containing the information and accompanied by the fee, prescribed by the Board, 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 THE PROVISION OF 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 audit 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 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;
 - (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 previous registered auditor was unable to complete as a result of death, disability or other unforeseen cause not under the control of that previous 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 previous registered auditor.

(3) Nothing in subsection (1)(a) prevents a registered auditor from signing the firm name or title under which that auditor practises.

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

Duties in relation to audit

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

(2) The first name and surname of every individual 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-

- (a) that 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) that 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) that proper accounting records have been kept in connection with the entity so as to reflect and explain all its transactions and record all its assets and liabilities correctly and adequately;

- (d) that the registered auditor has obtained all information, vouchers and other documents which in his or her opinion were necessary for the proper performance of the his or her duties;
- (e) that the registered auditor has not had occasion, 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 that, 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) that 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 auditor must, in reporting on anything in connection with the business or financial affairs of the entity, indicate that the auditor 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 registered auditor or as a member of a firm, if, the auditor has or had a conflict of interest in respect of that entity.

(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 audit standards.

Duty to report on irregularities

64. (1) An individual 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) (a) 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.

(b) A copy of the report to the Authority must accompany the written notice.

(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 taken place or is taking place;

- (ii) the suspected reportable irregularity is no longer taking place and that adequate steps have been 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 as soon as possible after receipt of a report containing a statement that the reportable irregularity is continuing, notify any appropriate regulator in writing of the details of the reportable irregularity to which the report relates and provide the regulator with a copy of the report.

(6) 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.

(7) 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.

(8) 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.

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

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 individual 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 third party (hereafter 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, only 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 that 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 the claimant to act or refrain from acting in some way or to enter into the specific transaction into which the claimant 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 the client or 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 such right.

(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
INSPECTORATE OF THE AUTHORITY

Inspection programme in respect of registered persons

66. (1) The Board must establish a practice review programme to provide for periodic practice reviews relating to registered persons and accredited professional bodies.

(2) Subject to the control and direction of the Board, the inspection and quality assurance committee established under **section 26(2)(d)** is responsible for the administration of the practice review programme.

(3) A registered person or accredited professional body, as the case may be must submit to the Board such information or returns as may be requested by the Board for purposes of its inspection programme or which the Board may require in a specific instance.

(4) The inspection and quality assurance committee must, in the form and manner required by the Board, provide to the Board an annual report about the practice review programme, containing the information specified by the Board.

Appointment of inspectors and forensic inspectors

67. (1) The Board may appoint one or more persons as inspectors for the purposes of this Part.

(2) The Board may appoint a person who has expert knowledge in a particular field to be a forensic inspector to investigate any contravention of this Act or any aspect thereof, specified-

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

- (b) in a written notice given to the forensic inspector by the Board.
- (3) A forensic inspector must perform his or her functions-
 - (a) subject to the control and direction of the inspection and quality assurance committee; and
 - (b) on the terms and conditions as the Board and the forensic inspector may agree.

(4) An inspector or a forensic inspector appointed under respectively subsection (1) or (2) must upon appointment be issued with a certificate of appointment in the form prescribed by the Board.

(3) When an inspector or forensic inspector exercises any power or performs any duty under this Act, he or she must be in possession of a certificate of appointment issued under subsection (2), and must produce the certificate of appointment at the request of any person in respect of whom such power is being exercised.

Practice reviews

68. (1) Subject to subsection (2), the inspection and quality assurance committee may at any time conduct, or direct an inspector to conduct a practice review.

(2) The inspection and quality assurance committee or an inspector, as the case may be, must serve on a registered person or an accredited professional body a notice of intention to conduct a practice review at least ten days before commencing such review.

(3) Notwithstanding subsection (2), the Board may, on the recommendation of the inspection and quality assurance committee appoint an inspector to conduct a practice review, if in the opinion of the Board-

- (a) an urgent practice review must be done in respect of a registered person or accredited professional body; and

- (b) the serving of a notice of intention to conduct a practice review would defeat the purpose of such review.

(4) A registered person who acts in good faith during a practice review and who produces information under **section 69** may not be held criminally liable or under civil law because of the production of the information.

(5) The Board may recover the costs of a practice review under this section from the registered person or accredited professional body concerned.

Powers of inspection and quality assurance committee, inspectors and forensic inspectors

69. (1) This section, in so far as it provides for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 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 Sub-Article.

(2) A member of the inspection and quality assurance committee, an inspector or forensic inspector may, for the purposes of investigating a contravention of this Act-

- (a) with the changes necessitated by the context in accordance with chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), at any reasonable time and without prior notice-
 - (i) enter any premises which he or she has reason to believe is occupied or used by a person or accredited professional body;
 - (ii) search for any book, record, statement, other document or thing used by such person or accredited professional body;
 - (iii) seize or make any copy of or extract from such book, record, statement, other document or thing,

as if such committee member, inspector or forensic inspector were a police official referred to in that Act and such book, record, statement, document or thing were concerned in the commission of any offence;

- (b) question any employer, employee or other person who is present on any such premises;
- (c) direct that such premises or any part thereof or anything therein be left undisturbed, whether generally or in any particular respects, for as long as it is reasonably necessary to search such premises for any book, record, statement, other document or thing prepared or used in connection with any contravention of this Act;
- (d) by notice in writing addressed and delivered to any person who has control over or custody of any such book, record, statement, other document or thing which has been prepared or used in connection with any contravention of this Act, require such person to produce such book, record, statement, other document or thing to him or her forthwith or at such place, date and time as such inspector or forensic inspector may determine;
- (e) examine any book, record, statement, other document or thing and require from any employer, employee or other person who is present on such premises or exercises control or custody as contemplated in paragraph (d), an explanation regarding any entry in such book, record, statement, other document or thing;
or
- (f) require a member of the Namibian Police Force, or request any other person, to assist him or her as an interpreter or otherwise in the exercise or performance of his or her powers, duties or functions under this Act.

(3) When a member of the inspection and quality assurance committee, an inspector or forensic inspector exercises or performs a power or duty under this Act in the presence of any person affected thereby, the committee member inspector or forensic inspector, as the case may be must on demand by such person produce to him or her the certificate of appointment.

(4) A member of the Namibian Police Force required, or any other person requested, by an inspector or forensic inspector to assist him or her as provided in subsection (2)(f) may accompany such inspector or forensic inspector in the exercise or performance of his or her powers, duties or functions as if such member or person was an inspector or forensic inspector.

(5) Any employer, employee or other person in charge of any premises on which persons are employed, must at all times furnish such assistance as are reasonably required by an inspector or forensic inspector in order to enable him or her to exercise or perform his or her powers, duties or functions effectively on or in any premises occupied or used by such employer, employee or other person.

(6) 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.

(7) In carrying out a practice review in terms of the Board’s practice review programme, the inspection and quality assurance committee or any inspector may-

- (a) on notice contemplated by **section 68(2)**, during business hours, enter any premises or part of any premises used or intended to be used by the registered person in connection with that person’s public practice or by an accredited professional body;
- (b) examine, extract information from and make copies of all records, documents and other relevant information required to carry out the practice review;
- (c) request records, documents or other relevant information from, or interview-
 - (i) an individual employed or otherwise in the service of a registered person or accredited professional body being inspected;

- (ii) the sole proprietor, partners, officers or directors of a firm being inspected or that employs or uses the services of a registered person being inspected, or
 - (iii) any person employed by a person referred to in subparagraph (i) or (ii);
and
- (d) summon any person who is or was a director, employee, partner or shareholder of the registered person or accredited professional body and whom the inspector believes is in possession of or has under his or her control, any document relating to the affairs of the registered person or accredited professional body, to lodge such document with the quality assurance committee or inspector, 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.

Duties of registered person or accredited professional body in respect of practice review

70. (1) A registered person or accredited professional body subject to a practice review must-

- (a) on notice contemplated by **section 68(2)** and during business hours, permit entry of the inspection and quality assurance committee or inspector;
- (b) cooperate with the inspection and quality assurance committee or inspector; and
- (c) provide all records, documents or information available to the registered person or accredited professional body as requested by the inspection and quality assurance committee or inspector in connection with the practice review.

(2) Where a registered person or accredited professional body fails to comply with subsection (1), without reasonable cause, the inspection and quality assurance committee or inspector must report the failure to comply to the Board and the failure may be considered

unprofessional conduct in the case of a registered person or non-compliance with this Act in the case of an accredited professional body.

Practice review or investigation report

71. (1) On completion of a practice review or investigation, the inspection and quality assurance committee, inspector or forensic inspector must, within a reasonable time, prepare a written report containing-

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

(2) An inspector or forensic inspector must provide his or her report to the inspection and quality assurance committee within the period stipulated by that committee.

(3) The inspection and quality assurance committee must serve a copy of the report prepared under subsection (1) or provided under subsection (2) on the registered person whose public practice was inspected and his or her employer, if any or on the accredited professional body, as the case may be.

(4) The registered person or accredited professional body 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 regarding the findings and recommendations, if any, in the report.

(5) The inspection and quality assurance committee 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 inspection and quality assurance committee such changes are justified.

Powers of inspection and quality assurance committee

72. (1) After considering the findings and recommendations, if any, in a report referred to in **section 71(3)**, and any submissions of a registered person or accredited professional body made under **section 71(4)**, the inspection and quality assurance committee may do one or more of the following:

- (a) consider the practice review or investigation completed and inform the registered person or accredited professional body accordingly without delay;
- (b) monitor, or ensure an inspector monitors, any action the registered person or accredited professional body has agreed to take in response to the findings and recommendations in the report concerned;
- (c) order the registered person or accredited professional body to report back to the inspection and quality assurance committee, in writing, within the time period specified in the order, on any action the registered person or accredited professional 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 that the registered person or accredited professional body take any action the inspection and quality assurance committee considers necessary, within the time period specified in the order, to ensure that the registered person or accredited professional body conducts business in accordance with this Act, or any other applicable law; or
- (e) refer any matter arising from the practice review 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 this Act.

(2) The inspection and quality assurance committee must as soon as practicable present a written report to the Board on each practice review or investigation completed under this Part.

PART 12
DISCIPLINARY POWERS OF BOARD

Definitions

73. In this Part, unless the context indicates otherwise-

“complainant” means any person who made a complaint against respondent and includes the Authority 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” means the disciplinary committee established under **section 26(2)(g)**;

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

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

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

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

“investigator” means a person appointed by the Authority to conduct an investigation of a complaint against a respondent; or

“respondent” means a registered person, former registered person or an accredited professional body that is the subject of a complaint.

Code of conduct and disciplinary rules by Authority

74. (1) The Board must-
- (a) with the assistance of the ethics committee prescribe a code of professional conduct that must be compliant with any applicable international code of professional conduct-
 - (i) setting out rules and guidelines for professional ethics in respect of registered persons and accredited professional bodies; and
 - (ii) specifying the conduct that constitutes unprofessional conduct and in respect of which the Board may conduct inquiries and disciplinary proceedings under this Act; and
 - (b) with the assistance of the investigation committee and the disciplinary committee formulate and prescribe disciplinary rules including-
 - (i) the investigation of unprofessional conduct or any allegation relating to accredited professional bodies;
 - (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 leading of evidence and the recording of the proceedings at an inquiry or hearing; and
 - (iv) any other matter regulating such investigation and the instituting and conducting of such inquiry or hearing.

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

Continuing jurisdiction

75. (1) Subject to subsection (2), a former registered person continues to be subject to the jurisdiction of the Authority or any of 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 former 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 made under **section 99**.

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

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

in a manner, that in the opinion of the Board 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;

(c) commits a criminal offence;

(d) refuses or fails to cooperate fully in respect of a practice review or the 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; or
- (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.

(2) The powers of the Authority 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

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 former 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.

(2) Whenever it appears to any regulator that there is *prima facie* proof of unprofessional conduct on the part of a registered person or former registered person, the regulator must forthwith send a report of that conduct to the Authority.

(3) The Authority 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 against accredited professional body

78. (1) A complaint alleging that the conduct of a trainee auditor, registered auditor or former registered person who was a registered auditor constitutes unprofessional conduct must be made in writing to the Authority in the form prescribed by the Board.

(2) A complaint alleging that the conduct of a trainee accounting technician, registered accounting technician, trainee professional accountant, registered professional accountant or former registered person who was an accounting technician or professional accountant constitutes unprofessional conduct must be made in writing in the form prescribed by the Board to the accredited professional body of which he or she is a member or under whose auspices her or she receives training under a training contract, as the case may be.

(3) A complaint referred to in subsection (2) must be dealt with by the accredited professional body in accordance with this Part with the changes necessitated by the context and its code of ethics and its disciplinary rules.

(4) A complaint alleging that an accredited professional body has-

- (a) failed to investigate a complaint referred to in subsection (2);
- (b) has failed to discipline any of its members in accordance with its code of ethics or its disciplinary rules; or
- (c) has otherwise contravened this Act,

must be made in writing to the Authority.

(5) Regardless of whether any complaint has been made under subsection (1), the Authority may cause the investigation under this Part of the conduct of a registered person, former registered person or an accredited professional body if the Authority has reasonable grounds to believe that such conduct constitutes unprofessional conduct or misconduct or that the accredited professional body committed the conduct referred to in subsection (4).

Service of copy of complaint

79. (1) Within the period prescribed by the Board after receiving or initiating a complaint under **section 78(1)** or **(5)**, the Authority must serve on the respondent-

- (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 Authority a written response to a complaint within the period prescribed by the Board after being served with a copy of the complaint.

(3) The Authority must forthwith after expiry of the period referred to in subsection (2)-

- (a) where the complainant is a person other than the Authority, serve a copy of any response to the complaint on the complainant; and
- (b) in all cases refer the complaint together with any response to the complaint to the investigation committee.

Consideration by investigation committee

80. Within the time period prescribed by the Board after the referral to the investigation committee of a complaint under **section 79(3)** 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 committee, the complaint is frivolous and vexatious, without merit or outside the limitation period referred to in **section 75(2)**;
- (b) make any order that the disciplinary committee is authorized to make under **section 87(1)**, if the respondent consents to the order;
- (c) investigate the complaint or refer the complaint to an investigator.

Investigation by investigation committee or investigator

81. (1) The investigation 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 severally or in combination;
- (c) must consider the allegations and the evidence and ascertain the facts of each complaint in the manner that the investigation 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) Where the investigation committee or an investigator investigates a complaint that the conduct of a registered auditor or trainee auditor constitutes professional incompetence, the investigation committee may-

- (a) require the registered auditor or trainee auditor to undertake such examination of knowledge or skills related to the public practice of a registered auditor that

the investigation committee directs to determine whether or not he or she is competent to practice as such; and

- (b) where the investigation committee has reasonable grounds to believe that the capacity of registered auditor or trainee auditor 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 qualified medical practitioners that the investigation committee designates.

(3) Where an investigator investigates a complaint and the respondent or an individual who is a registered person 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 (2), the investigator must report the failure or refusal to the investigation committee in writing.

- (4) Where the investigation committee -
 - (a) receives a report from an investigator under subsection (3); or
 - (b) investigates a complaint and the respondent or an individual who is a registered person 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 (2);

the investigation committee may recommend to the Board, and the Board may suspend or impose terms and conditions on the registration of the respondent or that other individual, if applicable, until the respondent or that individual responds to the inquiry or complies with the requirement.

(4) The Board may not act under subsection (3) unless the Board has given the respondent or individual concerned the opportunity to be heard.

(5) The investigation committee or an investigator must conduct an investigation under this Part independently from the Board and no person may interfere with or hinder any such investigation.

Investigation report

82. (1) After completing an investigation, the investigation committee or the investigator must, within a reasonable time, prepare a written report of the investigation and the findings of the investigation committee or the investigator.

(2) An investigator must provide his or her investigation report to the investigation committee.

(3) The investigation committee must serve a copy of the investigation report prepared under subsection (1) on the complainant and the respondent.

(4) The complainant and the respondent may each submit a written response to the investigation report within the period prescribed by the Board after being served with a copy of the investigation report.

Response to investigation report

83. (1) Within the period prescribed by the Board after the time period referred to in **section 82(4)** expires the investigation committee must, after consideration of the investigation report prepared in accordance with **section 82(1)** and any response to the investigation report submitted in accordance with **section 82(4)**, do one of the following:

- (a) dismiss the complaint, if in the opinion of the investigation committee-
 - (i) the allegations are frivolous or vexatious or without merit, or
 - (ii) there is insufficient evidence to support the allegations;

- (b) make any order that the disciplinary committee is authorized 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) Where the investigation committee dismisses a complaint under **section 80(a)** or subsection (1)(a), the investigation 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 Board; and
- (b) the Board, written notice of and reasons for the dismissal.

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

(4) Where the investigation committee refers a complaint to the disciplinary committee under subsection (1)(c), the investigation committee 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) present the complaint before the disciplinary committee and may, for that purpose, retain any legal or other assistance it considers necessary.

Charge against respondent

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

(2) The Authority must by hand or registered mail furnish a charge sheet to the respondent.

(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, 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 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) commence a disciplinary hearing in respect of the respondent in accordance with **section 85**.

(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 prescribed by the Board after the expiry of the period referred to in **section 84(3)(d)**; and

(b) conduct its proceedings in accordance with the disciplinary rules.

(2) The disciplinary committee must, not less than 30 days before the date set for the hearing, serve in the manner prescribed 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 investigation committee.

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

(4) The disciplinary committee must, for the purposes of this section, appoint a person, not being a Board member or a staff member of the Authority, to present the charge to the disciplinary committee.

(5) The disciplinary 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 the 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 should 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 in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

(7) The disciplinary committee may summon any person-

(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 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 may, with the necessary changes, apply 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.

(11) Notwithstanding the provision of any other law, if the conduct with which a respondent is charged amounts to an offence of which he, she or it has been convicted by a court of law, a certified copy of the record of the trial and conviction by that court is, on the

identification of the respondent as the person referred to in the record, sufficient proof of the commission by him, her or it of that offence, unless the conviction has been set aside by a superior court.

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 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 prescribed by the disciplinary rules with the determination and the order made and inform the Board thereof.

Penalties in respect of respondent found guilty

87. (1) If a respondent admits or is found guilty of the charge proffered against the respondent the disciplinary committee may make one or more of the following orders-

- (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 99**;
- (i) an order imposing any other sanction that the disciplinary committee considers to be appropriate.

(2) If a professional body finds a registered or trainee professional accountant or accounting technician guilty of unprofessional conduct resulting from a complaint referred to in **section 78(2)**, the professional body may make any of the orders referred to in subsection (1), with the changes necessitated by the context and forthwith inform the Board of the order imposed.

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

(4) The Authority must give effect to the decision of the disciplinary committee and may, if it deems it appropriate, publish the finding and the sanction imposed by the disciplinary committee by notice in the *Gazette*.

(5) 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)**.

(6) Where the Board is satisfied that a respondent has failed to comply with an order of the investigation committee or the disciplinary committee under this Part, the Board may, without further hearing, make an order suspending the respondent's registration subject to any terms and conditions that the Board considers appropriate.

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 former registered person or the fact that an employer has taken action against a person does not prejudice the right of the Board to institute a professional conduct inquiry 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\$200 000 or to imprisonment for a period not exceeding ten 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\$250,000 or to imprisonment for a period not exceeding ten 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\$25 000 or to imprisonment for a period not exceeding two years 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.

Jurisdiction of magistrate's court

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

PART 14
GENERAL PROVISIONS

Limitation of liability

94. A person 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 willful misconduct, gross negligence, dishonesty or fraud of that person.

Requirement of professional indemnity insurance

95. Every registered person must obtain the professional indemnity insurance in the amount prescribed by the Board.

Rules relating to practice under firm name

96. Where a registered auditor, registered professional 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, professional 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; or

- (c) in the case of a company, the names of the directors as required by section 179 of the Companies Act, 2004 (Act No. 28 of 2004).

Confidentiality

97. (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 and accountants, that requires the information for the purpose of an inspection with the consent of a registered auditor or registered professional accountant affected thereby.

(2) Every Board member, committee member, employee, consultant or any person in service of the Authority must, on assumption of office, take an oath of secrecy in the manner and form prescribed under **section 99**.

Exemption by Board

98. (1) The Board may on application or on its own initiative exempt a person 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 acceptable requirements relating to education, practical training and experience.

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

Regulations

99. (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 accounting or audit professions;
- (c) the minimum standards for offices or other places at or from which a registered person engages in public practice;

- (d) canvassing or touting for clients by registered persons;
- (e) 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;
- (f) the conducting of practice reviews under **Part 11**, regarding-
 - (i) the powers of the persons authorised to conduct such practice reviews;
 - (ii) the powers of the Board relating to a report received from a person referred to in subparagraph (i);
- (g) the manner in which the Board may perform or execute any power or function under this Act;
- (h) the fines which the Board may impose as contemplated in **section 87(1)(h)** and the payment thereof; and
- (i) the form and manner in which any person aggrieved by a decision of the Board or any accredited professional body under this Act may be appealed including that-
 - (i) any such appeal must be made to an appeal board constituted in the form and manner determined by the Minister subject thereto that-
 - (aa) its members must possess knowledge and a minimum of five years' experience in public practice, corporate governance, finance, economics, law or other related fields of expertise; and
 - (bb) its chairperson must be a legal practitioner with 10 years' experience as an admitted legal practitioner or a retired judge;

- (ii) members of the appeal board must be constituted to be independent from the Board and the Minister;
 - (iii) the period within which a person who wishes to appeal against a decision of the Board and the accredited professional body must appeal against such decision;
 - (iv) the manner in which a person referred to in subparagraph (iii) must appeal against a decision of the Board or an accredited professional body;
 - (v) the fees which a person referred to in paragraph (iii) must pay in respect of an appeal;
- (j) any matter required to be prescribed by the Minister under this Act;
 - (k) 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\$100,000 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.

Repeal of law and savings

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

(2) Except as otherwise provided in **section 100**, 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

101. (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 professional 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 professional 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

102. This Act is called the Accountants and Auditors Act, 2019, and comes into operation on a date determined by the Minister by notice in the *Gazette*.