



CHAPTER 46:10
FINANCIAL REPORTING
ARRANGEMENT OF SECTIONS

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Act 11, 2010,
S.I. 22, 2011,
Act 9, 2020,
S.I. 111, 2021.

An Act to establish the Botswana Accountancy Oversight Authority as the independent oversight body of the accounting and auditing profession; to regulate the reporting of financial matters of public interest entities and the corporate sector; and for matters incidental thereto.

[Date of Commencement: 1st April 2011]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Financial Reporting Act.

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

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

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

"**audit firm**" means a firm that provides audit services to a private or public entity;

"**auditing standards**" means the auditing standards issued by the Authority under section 53;

"**Authority**" means the Botswana Accountancy Oversight Authority established under section 3;

"**Board**" means the Board of Directors established under section 7;

"**certified auditor**" means an auditor registered under section 24 of the Act;

[Act 9 of 2020, s. 2(a).]

"**certified auditor of public interest entity**" means an auditor registered to provide audit services to a public interest entity in accordance with section 24;

"**certified auditor of P.I.E**" means the certified auditor of public interest entity;

"**engagement quality control review**" means a process designed to provide an objective evaluation, on or before the date of the report, of the significant judgments the engagement team has made and the considerations it made in formulating the audit opinion or report;

[Act 9 of 2020, s. 2(b).]

"**engagement team**" means all partners and staff performing an audit engagement, and any individuals engaged by the firm or a network firm who perform procedures on the engagement;

[Act 9 of 2020, s. 2(b).]

"**entity**" means any person or body of persons, whether incorporated or unincorporated;

"**financial reporting standards**" means the financial reporting standards issued by the Authority under section 52;

"**financial statements**" means a complete set of financial statements whether interim or final, prepared and presented in accordance with the financial reporting standards issued by the Authority under section 52;

"**firm**" means an audit firm for certified auditors or certified auditors of public interest entities registered under section 25, which firm provides audit services to public interest entities or other entities, including a partly or wholly

"independence" means independence of mind, independence in appearance, or both;

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

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

"Institute" means the professional accountancy body known as the Botswana Institute of Chartered Accountants established under section 3 of the Accountants Act (Cap. 61:05);

"ISQC 1" means the International Standard on Quality Control 1 or its successor quality control standard;

[Act 9 of 2020, s. 2(b).]

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

"member firm" means a firm providing professional auditing services which is registered in accordance with section 25;

[Act 9 of 2020, s. 2(b).]

"officer" in relation to a public interest entity, means a person who is responsible for the preparation of financial statements, and includes a member of the audit practice review committee, the chief executive, the chief financial officer and directors;

"professional misconduct" means an act or omission constituting misconduct in terms of section 38(2);

[Act 9 of 2020, s. 2(a).]

"public body" means any board, tribunal, commission, council, committee or other body, corporate or unincorporated established under any enactment, and includes any company in which the Government has equity shares;

[Act 9 of 2020, s. 2(b).]

"public interest entity (P.I.E)" has the meaning assigned to it under section 22; and

[Act 9 of 2020, s. 2(a).]

4. Seal of Authority

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

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

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

5. Objectives of Authority

The principal objectives of the Authority shall be to provide oversight to accounting and auditing services and promote the standard, quality and credibility of providing financial and non-financial information by entities, including public interest entities and, without limiting the generality of the foregoing, shall be to—

(a) promote the highest standards of auditors registered with the Authority;

[Act 9 of 2020, s. 3(a).]

(b) improve the standard and quality of accounting and audit services;

(c) improve the integrity, competence and transparency of accountants and auditors;

(d) promote development of the accountancy profession;

(e) protect the interest of the general public and investors in entities, including public interest entities;

(f) ensure compliance with and application of local and international accounting and auditing standards;

(g) promote high standards of corporate governance and compliance with professional ethics;

(h) monitor and adopt international developments in accounting and auditing fields;

(i) encourage effective collaboration with other regulators;

(j) implement a sound system of quality assurance mechanisms to ensure high quality audit practice; and

[Act 9 of 2020, s. 3(b).]

- (b) monitor the quality and fairness of financial reporting;
- (c) monitor and enforce compliance with the reporting requirements provided under any relevant enactment;
- (d) ensure and enforce compliance with standards and pronouncements issued by the—
 - (i) International Accounting Standards Board,
 - (ii) International Auditing and Assurance Standards Board,
 - (iii) International Public Sector Accounting Standards Board,
 - (iv) International Ethics Standards Board for Accountants of the International Federation of Accountants,
 - (v) International Accounting Education Standards Board, and
 - (vi) the successor bodies of each;
- (e) oversee and monitor the services and professional conduct of certified auditors of P.I.Es;
- (f) issue accounting and auditing rules, codes and guidelines in accordance with the relevant laws and international standards;
- (g) conduct investigations and, where necessary, impose relevant sanctions on certified auditors, officers of public interest entities as well as on public interest entities or other entities;

[Act 9 of 2020, s. 4(a)(i).]

- (h) establish, maintain and apply an investigation system and disciplinary procedure against certified auditors, and firms of public interest entities as well as against public interest entities or other entities and, where necessary, coordinate with or refer any disciplinary proceedings to other regulators;

[Act 9 of 2020, s. 4(a)(ii).]

- (i) co-ordinate and co-operate with international institutions in the development and enforcement of financial reporting, accounting and auditing standards;
- (j) oversee and monitor the regulatory system, training, professional development programmes and examinations and other activities of the Institute;
- (k) initiate, organise and participate in educational and training programmes in accounting and auditing;
- (l) encourage, and where appropriate, finance research into any matter affecting financial reporting, accounting, auditing and corporate governance;

(a) review and analyse financial reports and identify any failure on the part of the public interest entity or other entity, including a partly or wholly funded public body to comply with the requirements of any relevant law or any financial reporting standard, code or guideline issued under this Act;

[Act 9 of 2020, s. 4(b).]

(b) inform the public interest entity or other entity, including a partly or wholly funded public body of its shortcomings in its financial report and the required action to rectify the shortcomings; and

[Act 9 of 2020, s. 4(b).]

(c) conduct inspection, at least every three years, on the regulatory system and other activities of the Institute and investigate whether they meet the Institute's criteria for protecting the public by—

- (i) maintaining high professional standards,
- (ii) taking steps to support the development of the accountancy profession, and
- (iii) accomplishing other public interest objectives as set forth in their constitutions; and

(d) inform the public interest entity or other entity, including a partly or wholly funded public body, auditor, firm, the Institute or any other interested party of its, his or her right to make representations to the Authority in relation to any matter under consideration by the Authority.

[Act 9 of 2020, s. 4(b).]

7. Board of Directors

(1) The functions and powers of the Authority shall be exercised and performed by a Board of Directors consisting of nine members as follows—

- (a) the Accountant-General;
- (b) the Governor of the Bank of Botswana;
- (c) the Commissioner General of the Botswana Unified Revenue Service;
- (d) the Chief Executive Officer of the Non Bank Financial Institutions Regulatory Authority;
- (e) the Chief Executive of Business Botswana;

[Act 9 of 2020, s. 5(a).]

- (f) the Chief Executive of the Botswana Stock Exchange; who shall be *ex-officio* members;

(a) with at least 10 years experience in management, a profession or academia, and shall meet such other criteria as may be prescribed by this Act and provided in the rules; and

(b) who demonstrate expertise and practical knowledge of internationally recognised financial reporting and auditing standards.

(3) The first appointed members of the Board shall be appointed within six months of the coming into force of this Act.

(4) The Minister shall appoint a Chairperson of the Board from among members of the Board.

8. Powers of the Board

(1) The Board shall have powers to do all things necessary or appropriate in connection with the performance of its functions.

(2) Without derogating from the generality of subsection (1), and subject to the provisions of this Act, the powers of the Board shall include the power to—

(a) co-operate with, or make the Authority become a member or an affiliate of, any international body, the objects or functions of which are similar to or connected with those of the Authority;

(b) impose and collect such penalties, fees and fines as may be required under this Act and the rules;

(c) levy such charges or fees as may be reasonable for services and facilities provided by the Authority;

(d) issue rules, guidelines and standards relating to financial reporting, accounting and auditing; and

(e) conduct any inquiry or investigation or collect information, documents or evidence for the purpose of carrying out its functions.

9. Tenure of office

(1) An *ex-officio* member appointed under section 7(1) shall serve as a member of the Board by virtue of the office he or she holds.

(2) An expert and academic appointed under section 7(1)(g) or (h) as a member, shall hold office for a term of four years and shall be eligible for re-appointment for one further term.

(3) The Chairperson of the Board shall hold office for three years, unless he or she ceases to be a member of the Board and shall be eligible for re-appointment for one further term.

(4) Notwithstanding anything to the contrary herein contained, any appointed member, on attainment of the age limit to be prescribed by the rules, shall not be eligible for appointment or to continue in the said post.

6/27/24, 10:19 AM (ii) made an assignment, arrangement or composition in favour of creditors, which has not been rescinded or set aside;

(c) has within a period of 10 years immediately preceding the date of his or her proposed appointment, been convicted—

(i) in Botswana, of a criminal offence, or

(ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon; or

(d) has committed a material breach of the Code of Conduct and Ethics adopted by the Board.

(2) An auditor or former auditor shall not be appointed or elected as a member of the Board.

[Act 9 of 2020, s. 6.]

(3) The Minister may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Board.

(4) The Minister may, by notice in writing, remove an appointed member of the Board from office where the member—

(a) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;

(b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and his or her medical doctor has issued a certificate to that effect;

(c) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Institute and of the Authority, or of public interest;

(d) has failed to comply with the provisions of section 17 or 18; or

(e) has been convicted of an offence under this Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

(5) A member of the Board may resign from office by giving 30 days notice in writing to the Chairperson.

(6) For purposes of subsection (4)(c), "misconduct" includes any act done without reasonable excuse by a member of the Board which—

(a) amounts to failure to perform in a proper manner any duty imposed on him or her as a member;

- (b) if he or she is adjudged bankrupt or insolvent;
- (c) if he or she is absent from three consecutive meetings of the Board without reasonable cause;
- (d) upon his or her death;
- (e) if he or she becomes mentally or physically incapable of performing his or her duties as a member of the Board;
- (f) upon the expiry of one month's notice in writing to the Minister of his or her intention to resign from office;
- (g) if he or she is dismissed by the Minister on the grounds of contravening the provisions of this Act or for misconduct in accordance with section 10(4)(c); or
- (h) immediately after a ruling against the member is made on all appeals made in respect of a conviction of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

12. Filling of vacancy

(1) Where the office of an expert or academic member becomes vacant before the expiry of the member's term of office, the Minister, on the recommendation of the *ex-officio* members, shall appoint another person to be a member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

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

13. Remuneration and allowance

A member shall be paid out of the funds of the Authority, such remuneration and allowance, if any, as the Board, with the approval of the Minister may from time to time determine.

PART III

Meetings and proceedings of the Board (ss 14-19)

14. Election of Vice Chairperson

(1) At the first meeting of the Board, the members shall elect, from among their number, a Vice Chairperson who shall hold office for two years, unless he or she ceases to be a member of the Board, and shall be eligible for re-election for one further term.

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

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

(2) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet at least once in every three months, at such times and places as the Chairperson shall determine.

(3) Upon giving notice in writing of not less than 14 days, a meeting of the Board may be called by the Chairperson, provided that if the urgency of any particular matter does not permit the giving of notice, a special meeting may be called upon giving a shorter notice.

(4) The *quorum* at any meeting of the Board shall be five members, of which at least three are *ex-officio* members or their representatives and one is an expert member.

[Act 9 of 2020, s. 7.]

(5) There shall preside, at any meeting of the Board—

- (a) the Chairperson; or
- (b) in the absence of the Chairperson, the Vice Chairperson.

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

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

(8) The Chief Executive's presence shall not count towards the constitution of the *quorum* and he or she shall not be entitled to vote in any matter that is before the Board.

16. Committees of Board

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

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

- (a) standards setting committee;
- (b) financial reporting monitoring committee;
- (c) audit practice review committee;
- (d) enforcement committee; and
- (e) education and training committee.

(5) Subject to the specific or general directions of the Board, a committee may regulate its own procedure.

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

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

(8) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

17. Disclosure of interest

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

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

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

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

18. Confidentiality

(1) A member of the Board or any committee and any other person assisting the Board shall observe and preserve the confidentiality of all matters coming before the Board or committee, and the confidentiality shall subsist even after the termination of the terms of office or mandates.

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

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

19. Reports to Minister

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

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

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

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

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

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

(7) The Chief Executive shall, unless otherwise excused by the Board, attend every meeting of the Board.

20A. Secretary of Board

(1) The Board shall, on the recommendation of the Chief Executive Officer, appoint a Secretary who shall be suitably qualified and experienced.

[Act 9 of 2020, s. 9.]

(2) The Secretary of the Board shall attend meetings of the Board but shall have no right to vote, and shall be responsible for the accurate and complete recording of the Board's proceedings and decisions.

[Act 9 of 2020, s. 9.]

(3) The Secretary of the Board shall be accountable to the Board for his or her functions and responsibilities, and shall report directly to the Chairperson.

[Act 9 of 2020, s. 9.]

(4) The conditions of service, including the remuneration package of the Secretary, shall be set by the Board in consultation with the Minister.

[Act 9 of 2020, s. 9.]

21. Appointment of staff of Authority

(5) A member of staff of the Authority shall not engage in, or continue in any profitable pursuit outside the Authority.

(6) The terms and conditions of employment of staff of the Authority shall be as may be determined by the Board in consultation with the Minister.

PART V

Registration of certified auditors of Public Interest Entities and firms (ss 22-34)

22. Public Interest Entity

For purposes of this Act "public interest entity" means—

(a) any entity that has issued equity or debt securities for public subscription, and which is listed in a stock exchange;

(b) any bank, deposit taking institution, or other institution that is subject to supervision by the Bank of Botswana;

[Act 9 of 2020, s. 10(a).]

(c) any insurance company, pension and provident fund, collective investment undertaking, and any other institution that is subject to supervision by the Non-Bank Financial Institutions Regulatory Authority;

[Act 9 of 2020, s. 10(a).]

(d) any entity to which any two of the following conditions are applicable in excess of an amount or number the Minister may prescribe in the Regulations—

(i) annual revenue,

(ii) number of employees,

(iii) the total assets, or

(iv) total liability, not including shareholder's equity, applicable at the end of the preceding accounting year; or

(e) any partly or wholly funded public body.

[Act 9 of 2020, s. 10(b).]

23. Register

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

(2) The registers under subsection (1) shall be kept at the offices of the Authority and shall be open to inspection during office hours to any member of the public upon payment of such fee as may be prescribed.

[Act 9 of 2020, s. 11.]

(3) The Authority shall publish—

(a) not later than three months after the end of each financial year—

(i) an annual list of certified auditors, and

(ii) the names of member firms,

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

(b) on its website, a current list of all certified auditors and member firms, and shall keep such website up to date.

[Act 9 of 2020, s. 11.]

24. Registration of certified auditors

(1) Notwithstanding anything contained in the Companies Act (Cap. 42:01) or any other law, a person shall not hold any appointment, or offer any of services for remuneration, as a certified auditor unless he or she is registered by the Authority as a certified auditor under this Act.

[Act 9 of 2020, s. 12.]

(2) An application to practice as a certified auditor may be made by any person who satisfies the registration requirements issued by the Authority in such form as may be prescribed.

[Act 9 of 2020, s. 12.]

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

[Act 9 of 2020, s. 12.]

(4) Where, after consideration of an application, the Authority is satisfied that the applicant—

(a) satisfies the registration requirements under this Act;

(b) is a fit and proper person in accordance with the rules;

[Act 9 of 2020, s. 12.]

(6) Notwithstanding anything contained in the Regulations, rules or any other law, a person shall not practice as a certified auditor of P.I.E in a partnership with another person or in a registered firm, unless such person has passed the most recent quality assurance reviews and external audit practice reviews and the firm has satisfied the requirements of the ISQC 1 or its successor quality control standard as assessed by an external reviewer.

[Act 9 of 2020, s. 12.]

(7) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P5 000 for each day the offence continues to occur, up to a maximum period of 90 days, or to imprisonment for a period not exceeding five years, or to both.

[Act 9 of 2020, s. 12.]

25. Registration of audit firm for public entity

(1) An audit firm shall not practise or provide audit services to a public interest entity, unless such firm is registered with the Authority.

(2) A person shall not practice as a certified auditor in a partnership with other persons or in a registered firm, unless such person has been registered with the Authority as a certified auditor.

[Act 9 of 2020, s. 13(a).]

(3) An application under this section shall be in such form and manner as shall be prescribed by the Authority, and shall be accompanied by such fees and information as may be determined by the Authority in its rules.

(4) The Authority shall register the firm and enter its name and such particulars as it considers relevant upon being satisfied that—

(a) all the partners of the firm who are in the accounting and auditing field, are registered with the Authority;

[Act 9 of 2020, s. 13(b).]

(b) all the partners of the firm who are in the accounting and auditing field, are registered as certified auditors of public interest entities and there is a written undertaking by the applicant firm and such partners, that they shall be bound by the disciplinary provisions of the rules individually;

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

(1) The Authority shall issue a certificate of registration to—

- (a) a person registered as a certified auditor or certified auditor of P.I.E in accordance with section 24;

[Act 9 of 2020, s. 14(a).]

(b) an audit firm which has been registered as a firm for certified auditors or certified auditors of public interest entities in accordance with section 25; and

[Act 9 of 2020, s. 14(b).]

(c) a public interest entity or other entity required under any enactment to file its financial statements and reports with a Government Department or Authority in accordance with section 56.

[Act 9 of 2020, s. 14(c).]

(2) A certificate issued under this section shall be in such form and upon payment of such fees as may be determined by the Authority in its rules.

(3) A certificate of registration issued in terms of subsection (1) shall be valid for a period of 12 months.

27. Renewal of registration

(1) A certificate of registration issued in section 26, shall be renewed annually.

(2) A person or firm who or which wishes to renew registration shall, not later than three months before its expiration, make a written application to the Authority in such form and manner as may be prescribed by the Authority in its rules.

(3) Where the Authority is satisfied that the applicant continues to meet the requirements for registration, the Authority shall renew the registration.

(4) Where the Authority has not dealt with an application for the renewal of registration under subsection (3) before its expiration, the registration shall continue to be in force until the application for renewal is dealt with and any renewal in such case shall be taken to have commenced from the day when the registration would have expired.

28. Refusal to register a person or firm

The Authority may refuse to register—

(a) a person as a certified auditor or certified auditor of P.I.E where such person does not satisfy the requirements specified in section 24(4); and

[Act 9 of 2020, s. 15(a).]

(b) an audit firm as a firm for certified auditors or certified auditors of public interest entities where such firm does not satisfy the requirements specified in section 25(4).

the appeal, including any facts or legal analyses that may contradict or mitigate the refusal to register.

(3) Whenever such appeal is received, the committee responsible shall submit a response, in writing, to the Appeals Committee appointed under section 40, within 14 days.

(4) The Appeals Committee shall review the decision made under subsection (1), and issue its own decision within 30 days, either to affirm or to overrule the decision made by the Authority, and to register the auditor or firm, and shall forthwith notify the applicant in writing of its decision.

30. Change of name

(1) Where a certified auditor or firm changes a name or particulars recorded in the relevant register, such auditor or firm, shall, in accordance with the rules, notify the Authority within 30 days of the change.

[Act 9 of 2020, s. 16.]

(2) A person who fails to comply with subsection (1) shall be liable to a fine not exceeding P50 000.

31. Cancellation or suspension of registration

The Authority may either suspend or cancel the registration of a certified auditor of P.I.E or firm, and order the removal of such from the relevant register where the certified auditor of P.I.E or firm—

(a) has obtained registration by fraud or misrepresentation;

(b) no longer satisfies or has acted in breach of the auditing standards adopted by the Authority or any rules or regulations of the Authority;

(c) has been suspended or cancelled as a certified auditor or, member under the Institute;

[Act 9 of 2020, s. 17.]

(d) no longer satisfies the requirements of sections 24 and 25;

(e) has acted in breach of the provisions of this Act; or

(f) has been convicted of an offence, whether in Botswana or another jurisdiction—

(i) for which he or she could have been sentenced to imprisonment without the option of a fine, or

(ii) involving dishonesty.

32. Restoration of name to register

Where a certified auditor, certified auditor of P.I.E or firm has been removed from the register or the registration has been suspended, the Authority may either of its own volition, or on the application by the certified auditor, certified auditor of P.I.E or firm concerned, made in such form as may be prescribed, and after

(a) the name of a person or firm does not appear in the register shall be *prima facie* evidence that the person or firm is not registered with the Authority;

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

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

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

34. Offences in connection with registration

A person who—

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

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

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

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

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

(f) forges or utters, knowing the same to be forged, a document purporting to be a certificate of registration,

commits an offence and is liable to a fine not exceeding P250 000, or to imprisonment for a term not exceeding five years, or to both.

PART VI

Disciplinary and other Inquiries (ss 35-42)

35. Inquiry by Board

(1) The Board may, hold an inquiry where it has reason to believe by a written allegation made to it that a certified auditor—

[Act 9 of 2020, s. 19.]

(a) is suspected of professional misconduct;

(3) The Board shall invite and have present, during its deliberations under this section, a legal practitioner of their choice, to render legal advice to the Board, during the course of an inquiry under this Part.

(4) For the purposes of an inquiry under this section, the Board shall—

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

(5) All summonses and orders issued under the hand of the Chairperson or Vice Chairperson shall be deemed to be issued by the Board.

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

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

36. Disregard of summons, etc.

(1) A person to whom a summons or order is issued under section 35 and to whom such summons or order is served, who—

- (a) refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons;
- (b) refuses, without sufficient cause, to answer fully and satisfactorily, questions put to him or her by or with the concurrence of the Board; or
- (c) refuses or omits, without sufficient cause, to produce any document in his or her possession or under his or her control,

commits an offence and is liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding two months, or to both.

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

37. Powers of Board at inquiry

(1) The Board may, where it finds a certified auditor guilty of any allegation made under section 35—

(e) order him or her to pay such fine as the Board may determine.

(2) The Board may, after giving reasonable notice in writing to a certified auditor, take further action against the certified auditor where he or she has not complied with an order under subsection (1)(d) or (e).

[Act 9 of 2020, s. 20.]

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

38. Disciplinary powers of Board

(1) The Board may institute an inquiry under this Part, into the conduct of a certified auditor where—

(a) the certified auditor has been convicted of an offence within or outside Botswana, whether before or after the date of registration; and

(b) the Board is of the opinion that the offence under paragraph (a) constitutes professional misconduct.

[Act 9 of 2020, s. 21.]

(2) For purposes of subsection (1)(b), the following acts or omissions on the part of a member shall constitute professional misconduct—

(a) contravening the provisions of the Act;

(b) allowing any other person to hold himself or herself out as a certified auditor, unless such person is registered with the Authority as a certified auditor;

(c) allowing any person to offer any services for remuneration as a certified auditor, unless such person is registered by the Authority as a certified auditor;

(d) paying, allowing or agreeing to pay or allow to be paid directly or indirectly to any person other than a certified auditor or a retired partner or the legal representative of such partner, any share, commission or brokerage out of the fees or profits for his or her professional service;

(e) accepting or agreeing to accept any part of the fees or profits of the professional work of an advocate, attorney, auctioneer, broker, or other agent who is not a professional accountant;

(f) soliciting clients for professional work in a manner other than that approved by the Institute and the Authority;

(g) advertising professional services in a manner other than that approved by the Authority;

(k) charging in respect of any professional employment, other than where customary fees which are based on a percentage of profits or which are contingent on results;

(l) failing to withdraw from auditing a P.I.E or other entity, including a partly or wholly funded public body, where a certified auditor considers that he or she may have a conflict of interest or lack of professional independence in relation to that entity for which such a certified auditor has been engaged;

(m) gross negligence in the conduct of professional duties;

(n) failing to keep the funds of a client in a separate banking account or failing to use such funds for purposes for which they are intended;

(o) including in any statement, return or form to be submitted to the Authority any particulars whilst knowing them to be false;

(p) practicing as a certified auditor or audit firm through a body corporate in a manner which constitutes professional misconduct;

(q) practicing as a certified auditor, without obtaining a certificate of registration from the Authority;

(r) generally, engaging in any act which is likely to bring the accountancy profession or the Authority into disrepute; and

(s) any other breaches of the code of ethics, rules or the Regulations.

[Act 9 of 2020, s. 21.]

39. Unfit to practise

(1) Where it is alleged, under section 35, that a certified auditor has become mentally disabled to such an extent that it would be contrary to the public interest to allow the certified auditor to continue to practise, the Board shall—

[Act 9 of 2020, s. 22.]

(a) call for information regarding the allegation;

(b) cause such investigation to be made as it thinks necessary; and

(c) seek such legal advice or other assistance as it may require.

(2) The provisions of sections 35, 36 and 37 shall, with the necessary modifications, apply to a certified auditor as referred to under subsection (1).

[Act 9 of 2020, s. 22.]

- (b) four other members, appointed from among persons with qualifications and experience in—
 - (i) commerce,
 - (ii) industry,
 - (iii) academia, and
 - (iv) professions relevant to the work of the Appeals Committee.

[Act 9 of 2020, s. 23.]

(3) The members of the Appeals Committee shall be appointed by the Minister for a term of three years, and shall be eligible for re-appointment for a further term of three years.

[Act 9 of 2020, s. 23.]

(4) The members of the Appeals Committee shall be paid such allowances and remunerations as shall be determined by the Minister.

[Act 9 of 2020, s. 23.]

(5) The provisions of sections 17, 18 and 19 shall, with the necessary modifications, apply to members of the Appeals Committee.

[Act 9 of 2020, s. 23.]

40A. Secretary of Appeals Committee

(1) The Minister shall appoint a secretary to the Appeals Committee to facilitate the conduct of its business.

[Act 9 of 2020, s. 24.]

(2) The secretary to the Appeals Committee shall attend meetings of the Appeals Committee but shall have no right to vote.

[Act 9 of 2020, s. 24.]

(3) A person, shall when so requested by the secretary to the Appeals Committee, furnish the secretary with any information that may be necessary for the carrying out of the functions of the Appeals Committee.

[Act 9 of 2020, s. 24.]

40B. Co-option of experts

(2) The Appeals Committee shall determine its own procedure for the hearing and determination of appeals under section 40(1)

[Act 9 of 2020, s. 24.]

41. Appeals

(1) A certified auditor aggrieved by a decision of the Board at an inquiry under this Part may, within 14 days of the date of the decision, appeal to the Appeals Committee.

[Act 9 of 2020, s. 25.]

(2) A person aggrieved by a decision of the Board at an inquiry refusing to remove the name of a certified auditor from the register, or to suspend a certified auditor may, within 14 days of the date of the decision, appeal to the Appeals Committee against such decision.

[Act 9 of 2020, s. 25.]

(3) A person aggrieved by the decision of the Appeals Committee in subsections (1) and (2), may within 14 days of such decision, appeal to the Minister.

(4) A person aggrieved by the decision of the Minister in subsection (3), may within 30 days of such decision, appeal to the High Court.

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

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

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

42. Publication of outcome proceedings

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

[Act 9 of 2020, s. 26.]

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

6/27/24, 10:19 AM (b) employ a person whose registration by the Authority has been suspended or who has been suspended from practising as a certified auditor to carry out work in connection with his or her audit practice;

[Act 9 of 2020, s. 27.]

(b) practise under the name of a firm, unless the Authority has been notified of the following—

(i) in the case of a partnership, of the last names and initials of the partners of the firm, or

(ii) where the name of the firm is similar to, or includes the name of a regional or international network, or where the name of the firm mentions that it is part of a network in its letterhead or any other document, the nature of such association or relationship with the regional or international network; and

(c) sign any account, statement, report or other document which purports to represent work performed by a certified auditor, unless he or she is satisfied and is prepared to take full responsibility for the work done.

[Act 9 of 2020, s. 27.]

(2) A person who fails to comply with subsection (1) shall be liable to a fine not exceeding P500 000.

44. Auditor's report and opinion

(1) Where an auditor reports on the financial statements of a public interest entity or other entity, including a partly or wholly funded public body, that he or she has audited the accounts, the auditor shall express a clear written opinion in accordance with the requirements of the applicable auditing standards, this Act and other relevant enactments.

[Act 9 of 2020, s. 28(a).]

(2) A certified auditor of P.I.E shall, in his or her report, express an opinion unless the auditor has compiled the report using the auditing standards issued by the Authority pursuant to section 53.

(3) Where the annual report of a public interest entity or other entity, including a partly or wholly funded public body, discloses the extent of compliance with any regulatory requirements to which the entity or its officers and directors are subject, the auditor shall report whether the disclosure is consistent with such other regulatory requirements.

[Act 9 of 2020, s. 28(b).]

(4) Notwithstanding anything contained in any other law, all audits of P.I.Es shall be subjected to an engagement quality control review.

[Act 9 of 2020, s. 28(c).]

45. Material irregularity

- (i) acknowledge the receipt, in writing, of the notice, and
(ii) take such actions as he or she may deem necessary.

[Act 9 of 2020, s. 29.]

(2) The certified auditor shall, within 30 days of issuance of the notice referred to in subsection (1)(a), notify the Authority and any other relevant regulatory body as may be prescribed by the rules, of the material irregularity referred to in subsection (1), together with such other information as he or she deems necessary, unless the auditor is satisfied that the officers or the members of the Board of the public interest entity or other entity, including a partly or wholly funded public body, referred to in subsection (1), have taken adequate steps to remedy the irregularity.

[Act 9 of 2020, s. 29.]

46. Independence of auditor

(1) A certified auditor shall independently carry out his or her functions and shall not—

[Act 9 of 2020, s. 30(a)(i).]

(a) act in any manner contrary to any code of professional conduct and ethics adopted by the Authority to govern the accountancy profession; or

[Act 9 of 2020, s. 30(a)(ii).]

(b) engage in any activity that is likely to impair his or her professional independence as an auditor, whether independence in appearance or independence of mind.

(2) A certified auditor who contravenes any requirement under subsection (1) shall be subject to disciplinary proceedings of the Authority and liable to sanction by the Authority in accordance with section 48.

[Act 9 of 2020, s. 30(b).]

47. Conflict of interest

Where a certified auditor considers that it may have a conflict of interest or it may lack professional independence in relation to an entity for which such auditor or firm has been engaged as a certified auditor, such auditor shall withdraw from auditing that entity.

[Act 9 of 2020, s. 31.]

48. Sanctions of certified auditor of public interest entity

Where a certified auditor has committed a contravention of this Act or any rule issued under this Act, the Authority may do any or all of the following—

[Act 9 of 2020, s. 32.]

- (d) impose a fine not exceeding P100 000.

PART VIII

Accreditation and Oversight of the Botswana Institute of Chartered Accountants, Professional Accountancy Bodies, Branches or any other Similar Bodies or Trainers (ss 49-51)

[Act 9 of 2020, s. 33.]

49. Public interest oversight of Institute, professional accountancy bodies, etc.

(1) For purposes of this section "public interest obligation" means the responsibility of the Institute, its members, professional accountancy bodies, branches and any other similar professional accountancy bodies or trainers to discharge their functions in the interest of their principals and the community as a whole, as may be determined by the Authority from time to time in its rules.

[Act 9 of 2020, s. 33.]

(2) The Authority shall ensure that the Institute, a professional accountancy body, branch or any other similar professional accountancy body or trainer—

- (a) fulfils its public interest obligations;
- (b) maintains and promotes the highest standards of professional and business conduct; and
- (c) develops the accountancy profession and accomplishes the other public interest objectives set forth in its constitution.

[Act 9 of 2020, s. 33.]

(3) The Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer shall furnish the Authority, within six months of the end of its financial year—

- (a) an annual report of its activities regarding the fulfilment of its public interest obligations; and
- (b) an assessment or review of performance indicators set forth in the rules.

[Act 9 of 2020, s. 33.]

(4) If the Authority finds that the Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer is not meeting its obligations under subsection (2), the Authority may, upon 30 days' written notice to the Institute, professional accountancy body, branch or trainer, assume or suspend the operations of the Institute, professional accountancy body, branch or any other professional accountancy body or trainer until such obligations have been met.

(1) The Authority shall accredit the Institute, professional accountancy body or branch or any other similar professional accountancy body or trainer, upon application supported by evidence that the Institute, professional accountancy body or branch or any other similar professional accountancy body or trainer is a member of the International Federation of the Accountants or other local or international professional bodies and is in compliance with its membership obligations.

[Act 9 of 2020, s. 33.]

(2) The Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer shall not establish a branch of the accountancy profession unless it has obtained accreditation from the Authority for the particular purpose.

[Act 9 of 2020, s. 33.]

(3) To qualify for accreditation, the Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer shall demonstrate to the satisfaction of the Authority that—

(a) the Council of the Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer has passed a resolution to establish the branch, before the application for accreditation of the branch by the Authority;

(b) it complies with the requirements for professional development and achievement of professional competence in line with international best practice;

(c) it has appropriate mechanisms for ensuring that its members participate in continuing educational and professional development in line with international best practice;

(d) it has mechanisms to ensure that its members are disciplined, where appropriate;

(e) it has appropriate mechanisms in place to discharge its public interest obligation under section 49;

(f) it keeps a register or registers of its members in the form determined by the Board of the Authority, or the Council of the Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer; and

(g) it meets other requirements as stipulated by the Authority in line with international best practice.

[Act 9 of 2020, s. 33.]

(4) To retain its accreditation, the Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer shall, at least once a year, at a time to be determined by the Authority,

(a) give written notice to the Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer of its intention to cancel the accreditation of the Institute, the concerned professional accountancy body, branch or any other similar professional accountancy body or trainer, stating the reasons for such cancellation; and

(b) afford the Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer a period of not less than 21 days and not more than 30 days within which to submit grounds for its accreditation not to be cancelled.

[Act 9 of 2020, s. 33.]

(2) If the Authority considers that cancellation of accreditation under this section would not be in the best interests of the public, the accounting and auditing profession or the members of particular branch of the accountancy profession, it may, in writing, extend the accreditation on such condition as it considers appropriate.

[Act 9 of 2020, s. 33.]

(3) The accreditation of the Institute, professional accountancy body, branch or any other similar professional accountancy body or trainer shall lapse automatically if it—

(a) ceases to exist; or

(b) fails to pay any prescribed fee or portion thereof within the period prescribed by the Authority.

[Act 9 of 2020, s. 33.]

PART IX

Setting of Standards and Monitoring (ss 52-59)

52. Financial reporting standards

(1) The Authority shall—

(a) adopt, issue, and keep up-to-date financial reporting standards for public interest entities or other entities, including a partly or wholly funded public body and ensure that they are consistent with the International Financial Reporting Standards and interpretations issued by the International Accounting Standards Board; and

[Act 9 of 2020, s. 34(a).]

(b) issue appropriate interpretations and implementation guidelines to facilitate common adoption of standards by public interest entities or other entities, including a partly or wholly funded public body.

[Act 9 of 2020, s. 34(a).]

(4) The Authority may define in its rules certain micro enterprises that shall be exempt from the standards issued pursuant to subsection (3).

(5) The Authority may, with the approval of the Minister, participate in co-operative arrangements with—

- (a) qualified agencies of other governments, including their regulatory agencies;
- (b) regional and subregional accountancy bodies; or
- (c) international accountancy bodies, and other international institutions,

in the development of financial reporting, accounting and auditing standards to assist it in performing the functions described in subsections (1), (2) and (3).

53. Auditing standards

(1) The Authority shall adopt, issue and keep up-to-date auditing standards and ensure that they are consistent with international auditing, assurance and ethics pronouncements of the International Federation of Accountants.

(2) The Authority shall adopt, issue and keep up-to-date auditing standards that conform to international best practice for certified auditors.

[Act 9 of 2020, s. 35(a).]

(3) The Authority may issue rules and guidelines for the purpose of implementing the auditing standards adopted by it.

(4) Every certified auditor shall, in the exercise of his or her profession, comply with—

[Act 9 of 2020, s. 35(b).]

(a) such minimum requirements as shall be specified by the Authority as minimum requirements for providing auditing and assurance services; and

(b) any rule, regulation, code or guideline issued under this Act.

(5) Every certified auditor shall, in the exercise of his or her profession, comply with such minimum requirements as may be specified by the Authority in the separate auditing standards for certified auditors.

(6) The Authority may, with the approval of the Minister, utilise the Institute to participate in co-operative arrangements with—

- (a) qualified agencies of other governments, including their accountancy regulatory agencies; or
- (b) regional and subregional accountancy bodies and other international accountancy bodies,

to assist it in performing the functions described in subsections (1), (2) and (3).

(3) The Authority may, in deciding whether to approve the standards or their amendments, have regard to any comment submitted under subsection (2).

55. Compliance by public interest entities and others

Where any public interest entity or other entity including a partly or wholly funded public body is required to prepare any financial statement or report under a particular enactment, it shall ensure that the financial statement or report is in compliance with the—

[Act 9 of 2020, s. 36.]

- (a) financial reporting requirements of any other relevant enactment;
- (b) financial reporting standards issued by the Authority under section 52;
- (c) rules made under this Act; and
- (d) codes, rules or regulations of the Authority with the ultimate objective of protecting the interest of the general public and investors.

56. Monitoring of financial statements and reports

(1) Where a P.I.E or other entity, including a partly or wholly funded public body, is required under any enactment to file its financial statements with a Government Department or Authority, the Authority or any officer of the Authority may review the financial statements and reports of the P.I.E or other entity, including the partly or wholly funded public body.

[Act 9 of 2020, s. 37(a).]

(2) The financial statements and reports of a public interest entity or other entity, including a partly or wholly funded public body filed with the Botswana Unified Revenue Service shall be exempted from the right to review accorded in terms of subsection (1).

[Act 9 of 2020, s. 37(b).]

(3) A Government department or authority referred to in subsection (1) may, at the request of the entity, for good cause shown, remove any confidential information or trade secrets from the financial statement or report filed with the Authority.

(4) The Authority, or any officer authorised by it in writing, may seek further information or clarification from—

- (a) any officer or director of a P.I.E or other entity, including a partly or wholly funded public body;

[Act 9 of 2020, s. 37(d).]

(6) The Authority may require the filing of the financial statement or report to be accompanied by such fees and such information as it deems fit.

(7) The Authority may impose a fine not exceeding P20 000—

(a) for each failure of a public interest entity or other entity, including a partly or wholly funded public body to file a copy of its financial statements and reports with the Authority;

[Act 9 of 2020, s. 37(e)(i).]

(b) for each failure of a P.I.E or other entity, including a partly or wholly funded public body, to file with the Authority financial statements and reports that have been audited by a certified auditor;

[Act 9 of 2020, s. 37(e)(ii).]

(c) on every officer who is responsible for the failure of a public interest entity or other entity, including a partly or wholly funded public body to file a copy of its financial statements and reports for every day during which the default continues;

[Act 9 of 2020, s. 37(e)(iii).]

(d) on every officer who is responsible for the failure of a P.I.E or other entity, including a partly or wholly funded public body, to file financial statements and reports that have been audited by a certified auditor; or

[Act 9 of 2020, s. 37(e)(iv).]

(e) for each wilful refusal of a public interest entity or other entity, including a partly or wholly funded public body, its officers, employees or auditors, to provide further information or clarification in response to request pursuant to subsection (4).

[Act 9 of 2020, s. 37(e)(v).]

(8) If an officer, director or employee of a P.I.E. or other entity, including a partly or wholly funded public body or a certified auditor or or other entity, including a partly or wholly funded public body, without reasonable cause, conceals information or refuses to provide further information or clarification, he or she commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding two years, or to both.

[Act 9 of 2020, s. 37(f).]

(9) The Minister may, by Order published in the *Gazette*, exempt any P.I.E or other entity, including a partly or wholly funded public body, from the provisions of this section.

(a) inspect any relevant book, audit working papers and files, document and record in the possession, or under the control of the certified auditor, his or her partner, employee or associated persons and make copies of or take any abstract of or extract from any such book, document and record; and

[Act 9 of 2020, s. 38(a).]

(b) seek information or clarification from any partner, employee or associated person of the certified auditor.

[Act 9 of 2020, s. 38(a).]

(2) Subject to the provisions of subsection (3), every auditor, his or her partner, employee or associated persons shall, at the request of the Authority, or any officer authorised by it in writing, produce any relevant book, audit working papers and files, document or record in his or her possession or under his or her control for the purposes of subsection (1).

(3) A certified auditor, a partner, employee or associated person of such certified auditor who, without reasonable cause, conceals information or fails or refuses to produce any relevant book, document or record in his or her possession or under his or her control pursuant to a request made in accordance with subsection (2) commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding two years, or to both.

[Act 9 of 2020, s. 38(b).]

58. Power of investigation

(1) The Authority, or any officer, accountancy regulatory agencies of other countries, regional and subregional accountancy bodies and other international accountancy bodies, authorised by the Authority in writing, may investigate or cause to be investigated on behalf of the Authority—

(a) any complaint of dishonest practice, negligence, professional misconduct, or malpractice made against a certified auditor or firm;

[Act 9 of 2020, s. 39(a).]

(b) any breach of the Code of Professional Conduct and Ethics by a certified auditor;

[Act 9 of 2020, s. 39(a).]

(c) any material irregularity notified to it pursuant to section 44; or

(d) any failure to provide reports or documents required by section 56.

(2) Where the Authority investigates a complaint—

(a) it shall notify the auditor whose conduct, act or omission is under investigation, of the nature of the complaint;

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(4) and (5), produce any relevant book, audit working papers or files, record or document in his or her possession or under his or her control to the Authority where the Authority is conducting an investigation for the purposes of subsection (1).

[Act 9 of 2020, s. 39(b).]

(4) If an officer, director, employee of a public interest entity or other entity, including a partly or wholly funded public body, or a certified auditor of a public interest entity or other entity, including a partly or wholly funded public body, without reasonable cause conceals information or fails or refuses to produce any relevant book, document or record in his or her possession or under his or her control pursuant to a request made in accordance with subsection (3), he or she commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding two years, or to both.

[Act 9 of 2020, s. 39(c).]

(5) A person may refuse to answer a question put to him or her, or refuse to furnish any information, document, record or book, where the answer to the question or the production of the document, record or book might tend to incriminate him.

(6) Nothing in this section shall be taken to compel the production by the auditor, his or her partner, employee or associated persons, the public interest entity or other entity, including a partly or wholly funded public body, or its officers of any book, document, record or any other material containing—

[Act 9 of 2020, s. 39(d).]

(a) any information which is confidential under the Companies Act (Cap. 42:01) or any other law for the time being in force; and

(b) privileged communication by or to a legal practitioner in that capacity, except in so far as the disclosure of the information is made according to the law.

(7) The Authority shall refer the findings of any investigation under subsection (1) to the enforcement committee for review and a recommendation of the appropriate sanction to be imposed.

59. Sanctions of public interest and other entities, and their officers

(1) Where the Authority reaches a final decision under sections 52 and 53, to the effect that a public interest entity or other entity, including a partly or wholly funded public body, has failed to comply with any financial reporting and auditing standard, code or guideline issued under this Act, and with such other financial reporting and auditing standards as may be specified under the relevant enactments, the Authority may either issue a warning to the entity or serve a notice on the entity for an immediate restatement of its financial statements or report, or do both.

[Act 9 of 2020, s. 40(a).]

(4) In the event that the Authority finds that an officer wilfully failed to comply with either subsection (1) or (2) or was responsible for a serious distortion of the financial statements or reports of the P.I.E or other entity, including a partly or wholly funded public body, the Authority may—

- (a) impose a fine not exceeding P20 000 on that responsible officer;
- (b) suspend or disqualify that responsible officer from serving in that capacity in that P.I.E. or other entity, including a partly or wholly funded public body; and
- (c) refer the matter to any other relevant Government Department or Agency for appropriate action.

[Act 9 of 2020, s. 40(d).]

(5) Where the Authority finds that an officer of a public interest entity or other entity, including a partly or wholly funded public body, who wilfully failed to comply with either subsection (1) or (2) or was responsible for a serious distortion of the entity's financial statements or reports, is a certified auditor, it shall refer information about the contravention to the Institute for appropriate disciplinary action.

[Act 9 of 2020, s. 40(e).]

(6) A person commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both, if he or she knowingly and wilfully aids, abets, assists, incites or induces another person to prepare or issue an inaccurate or materially misleading financial statement or financial report.

PART X

Financial and accountability provisions (ss 60-68)

60. Revenues of Authority

(1) The revenue of the Authority shall consist of—

- (a) such monies as may be appropriated by the National Assembly;
- (b) fees that the Authority may charge for services it may render;
- (c) money paid in respect of fines imposed by the Authority under this Act;
- (d) grants and donations that the Authority may receive;
- (e) such income that the Authority may receive from investments, rentals, sale of land and buildings; and
- (f) such other sources as may be approved by the Government.

[Act 9 of 2020, s. 41.]

[Act 9 of 2020, s. 41.]

61. Annual estimates

The Authority shall prepare, in such form and at such time, not later than three months before the commencement of each financial year, as may be prescribed—

(a) a budget in respect of the next ensuing financial year that sets forth the Authority's estimated receipts and expenditures and the sums which are likely to be required by it from the Government during the next ensuing financial year and forward;

(b) a business plan and its strategy and activity programme; and

(c) a certification by the Chief Executive and any other senior officer in charge of accounting and finance functions of the Authority, that the budget represents a fair and reasonable projection of the income and expenditure of the Authority,

copies of which shall be submitted to the Minister for consideration and approval of the sums shown in the budget to be required from the Government.

62. Financial year

The financial year of the Authority shall be a period of 12 months commencing on the 1st day of April and ending on the 31st day of March of every year.

[Act 9 of 2020, s. 42.]

63. Imposition of fines

The Authority may, as may be prescribed, impose fines against any contravention of the provisions of this Act.

64. Charges

(1) The Authority may prescribe charges to be paid to the Authority in respect of services provided by it.

(2) Without limiting the generality of subsection (1), the services and facilities that the Authority may charge for, include—

(a) the annual registration of P.I.E.s and other entities, including a partly or wholly funded public body;

(b) the submission of financial statements and reports to it;

(c) registering certified auditors;

65. Accounts and audit

(1) The Authority shall keep and maintain proper books of accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Authority, and shall prepare, in each financial year, a statement of such accounts.

(2) The accounts of the Authority in respect of each financial year shall, within three months of the end thereof, be audited by an auditor appointed by the Board.

[Act 9 of 2020, s. 44.]

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

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

(4) In default of an appointment under subsection (2), the Board shall appoint another auditor.

(5) An auditor appointed under subsection (2) shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on, whether or not—

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

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

66. Financial and annual report

(1) The Authority shall prepare for each financial year, a financial report which shall consist of—

- (a) statement of financial position, statement of profit or loss and other comprehensive income, statement of changes in reserves, statement of cash flows and other financial statements for the year, including statements of accounts specified in section 65, as required by applicable accounting standards or in the International Financial Reporting Standards;

6/27/24 (4) The financial report shall be caused to be audited by a certified auditor in the same manner as stipulated for the statement of accounts in section 65.

(5) The auditor shall audit the financial report and make a report to the Authority whether, in his or her opinion, the financial report gives a true and fair view of the state of affairs of the Authority as at the end of the financial year to which it relates, and where the auditor is not of that opinion, the report shall state the reason.

67. Submission of reports to Minister

(1) The Authority shall, within a period of six months of the end of the financial year, submit, to the Minister, a comprehensive report on the operations of the Authority during that year, the financial report, together with the auditor's report and the accounts audited under section 65.

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

68. Performance audit

The Authority shall cause to be conducted, by an independent auditor, a performance audit of its operations at intervals of a period not exceeding three years.

PART XI

Miscellaneous provisions (ss 69-73)

69. Indemnity

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

70. Offences and penalties

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

(2) A certified auditor, or partner in a firm for certified auditors, who knowingly employs or engages any person as a certified auditor who was registered and—

(a) whose name has been removed from the register and has not been restored; or

(b) who has been suspended from registration in terms of this Act, during the period of suspension, save with the prior written consent of the Authority, which consent may be given for such period and subject to such conditions as the Authority may determine,

71. Regulations

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

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

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

72. Rules of the Authority

(1) The Authority may make rules for the regulation of the Authority, and in respect of all matters which by this Act are required or permitted to be made by the rules.

[Act 9 of 2020, s. 47.]

(2) The Authority shall ensure that a copy of its rules and of any of its amendments is available—

- (a) for inspection without charge; or
- (b) for purchase by members of the public, in every office or premises of the Authority.

(3) The rules made by the Authority shall be binding on the Authority, the persons registered by the Authority, and all persons claiming under the rules.

73. Transitional provisions

Notwithstanding anything contained in sections 24 and 25, every person who, immediately before the coming into operation of this Act—

- (a) is or has been providing audit and assurance services to a public interest entity, may continue to provide such services without being registered under this Act—
 - (i) during the period of six months beginning with the commencement date, and
 - (ii) where, within that period an application is made to register, until that application is finally disposed of or withdrawn; and

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