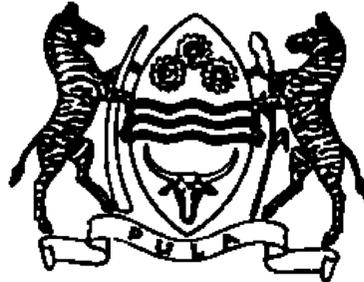


ACCOUNTANTS ACT, 1988

No. 16



of 1988

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FIRST SCHEDULE
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An Act to provide for the regulation of Accountants and Auditors

Date of Assent: 24.10.88.

Date of Commencement: On Notice.

ENACTED by the Parliament of Botswana.

PART I Preliminary

Short title
and com-
mencement

1. This Act may be cited as the Accountants Act, 1988, and shall come into operation to such extent and on such dates as the Minister may, by notice published in the Gazette, appoint.

Interpre-
tation

2. In this Act, unless the context otherwise requires —
 “Accountant” means any person registered in accordance with the provisions of Part IV of this Act;
 “Associate Member” means a person who is registered in terms of section 16 (1) as an associate member of the Institute;
 “Rules” means the Rules of the Institute made in terms of section 31;
 “committee” means any committee established under this Act;
 “Council” means the Council of the Institute established under section 9;
 “Disciplinary Committee” means the Disciplinary Committee established under section 25;
 “Fellow Member” means a person who is registered in terms of section 16 (2) as a fellow member of the Institute;
 “Financial Year” means the calendar year ending 31st of December of any year and, in respect of the first accounting period, it shall be the period whether shorter or longer than twelve months as the Institute may determine;

- “Institute” means the Botswana Institute of Accountants established under section 3;
- “Licentiate Member” means a person who is registered in terms of section 16 (4) as a Licentiate Member of the Institute;
- “Member” means a person who is registered in accordance with section 16 as a member of the Institute;
- “Membership Certificate” means the certificate of membership of the Institute issued in accordance with section 18;
- “Minister” means the Minister for the time being responsible for finance;
- “Practising Certificate” means the practising certificate issued in accordance with section 19;
- “Professional misconduct” shall be construed in accordance with section 24;
- “Public Practice” means practice as a public accountant by a person who has an office or place of business in Botswana in the capacity of sole principal or in partnership and “practising” as applied to an accountant shall have the same connotation;
- “Register” means the register of members maintained in accordance with section 15;
- “Registered Member” of the Institute means a person who is registered in terms of section 16 (3);
- “Registrar” means the registrar appointed under section 14 (2) of this Act;
- “Resident” means —
- (a) a citizen of Botswana; or
 - (b) any person to whom a residence permit has been issued under section 17 of the Immigration Act, 1977 and who is ordinarily resident in Botswana for a period of not less than nine months in each year during the period of validity of his residence permit;
- “Secretary” means the person appointed Secretary to the Institute under section 14(1).

PART II *Botswana Institute of Accountants*

3. (1) There is hereby established an Institute to be known as the Botswana Institute of Accountants.

(2) The Institute shall be a body corporate with perpetual succession and a common seal, and with capacity, in its common corporate name, to —

- (a) acquire, hold and dispose of property;
- (b) sue and be sued;
- (c) make contracts; and
- (d) do all such other things as are necessary for, or incidental to, the carrying out of its objects and the performance of its functions and duties under this Act.

Estab-
lishment
of the
Institute

Objects
and
functions
of the
Institute

(3) The Institute shall consist of such persons whose names appear in the register of members maintained in accordance with section 15 of this Act.

4. The principal objects and functions of the Institute shall be —

- (a) to advance the art of accountancy, financial management, taxation and allied subjects as applied to all or any of the professional services provided by accountants whether engaged in public practice, industry and commerce or in the public service;
- (b) to preserve and maintain the integrity and status of the profession and take such lawful steps as may be thought necessary to promote the highest standards of competence, practice and conduct among members;
- (c) to determine the qualifications of persons for admission as members;
- (d) to provide for the settlement of disputes relating to the profession between members of the Institute and other persons;
- (e) to represent the views of the profession;
- (f) to promote the international recognition of the Institute;
- (g) to provide for the education, training and examination of persons practising or intending to practice the profession of accountancy;
- (h) to promote or assist in promoting legislation which may be deemed to be of relevance to the Institute, and to make any representations regarding any legislation which may be considered prejudicially to affect the interest or status of the Institute;
- (i) to establish and support or aid in the establishing and supporting of associations, funds, trusts and conveniences calculated to benefit the members or their dependants or employees of the Institute or their dependants and from any special funds accumulated thereby to grant pensions and allowances to members or their dependants or to employees of the Institute or their dependants;
- (j) to do the foregoing and such further lawful acts in a manner consistent with the provisions of this Act as may be incidental or conducive to furthering the interests of the Institute.

Funds
of the
Institute

5. (1) The funds of the Institute shall consist of such sums as may —

- (a) be paid to the Institute from moneys appropriated by Parliament for the purpose;
- (b) be charged by the Institute by way of fees;
- (c) vest in or accrue to the Institute by way of grants, voluntary contributions, bequests, donations, subscriptions, interests, rents, royalties or sale of any property, real or personal;

(d) be donated to the Institute by any foreign government, international agency or other external body.

(2) The Institute may, subject to the provisions of its rules, raise by way of loans or otherwise such sums as it requires for the discharge of its functions:

Provided that the Institute shall not accept any grants or donations or raise any loans or moneys from any sources outside Botswana without the approval of the Minister.

(3) There shall be disbursed from the funds of the Institute —

(a) the salaries and allowances of the staff of the Institute;

(b) such reasonable travelling and subsistence allowances for members of the Council or members of any Committee of the Council when engaged on the business of the Institute at such rates as the Council may determine; and

(c) any other expenses incurred by the Institute in the discharge of its functions.

6. The Council shall cause to be maintained proper books of account for the Institute relating to —

(a) all monies received and expended by the Institute;

(b) all income and expenditure of the Institute; and

(c) all assets and liabilities of the Institute.

7. (1) The members at each annual general meeting shall appoint as auditor a member of the Institute in public practice who is not a member of the Council, at such remuneration as the Council shall determine.

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

(3) The Institute in general meeting may, by resolution passed by not less than two-thirds of the members entitled to vote and voting thereon, remove the auditor from his office before the expiration of his period of office, and may, by resolution passed at the same meeting by a majority of the members entitled to vote and voting thereon, appoint in his stead another member in public practice. In default of such an appointment, the Council may appoint an auditor in the place of the auditor.

8. (1) The Institute shall convene an annual general meeting in accordance with its rules within four months of the end of the financial year.

(2) Every fully paid-up member of the Institute shall be entitled to receive notice of and attend such meetings, but only persons resident in Botswana and registered under section (16) (1) and (2) shall be entitled to vote at each meeting in person or by proxy.

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

Books of
Account

Appoint-
ment of
auditor

General
meeting

(4) The Institute may convene a special general meeting upon giving such notice as may be prescribed in the rules.

(5) At all general meetings of the Institute, the President, or in his absence the Vice-President, shall be Chairman. In the absence of both of them, the Chairman shall be elected from among the members of the Council present or in the absence of all of them such member as the members present may elect for the purpose of that meeting.

(6) Save as otherwise provided in the rules, all questions to be decided at a general meeting of the Institute shall be by majority vote of those present and entitled to vote in terms of subsection (2).

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

PART III Administration of the Institute

Council

9. (1) The affairs of the Institute shall be managed by the Council in accordance with the provisions of this Act, the rules and any lawful resolutions passed at a general meeting of the Institute.

(2) The first Council shall be the Council of the existing Association of Accountants immediately prior to the date of this Act.

(3) Subject always in the case of the first Council to the provision of subsection (2) of this section, the Council shall consist of —

- (a) the Accountant-General or his nominee;
- (b) the Auditor-General or his nominee;
- (c) six members registered under section 16(1) or (2), at least one of whom shall be a member not in public practice and all of whom must be resident in Botswana, who shall be elected to be members at the annual general meeting convened under section 8 in accordance with the rules of the Institute:

Provided that the Minister may at the request of the Council, by regulation, increase the membership of the Council who shall thereupon be elected in accordance with the rules of the Institute.

(4) The Council may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Council but such person shall have no vote.

(5) No remuneration shall be paid to any Council member for holding office.

President
and Vice-
President

10. (1) The members of the Council shall at their first meeting elect a President and Vice-President of the Institute from their number.

(2) The President and Vice-President shall hold office for a period of one year from the date of their election and may offer themselves for re-election:

Provided, however, that no member of the Institute may hold office as President or Vice-President for longer than two consecutive years at a time.

(3) In the event of any casual vacancy arising in respect of the office of the President or Vice-President, the Council shall at its next meeting, or as soon as possible thereafter, elect a person from among their number to fill such vacancy.

(4) The President, or in his absence the Vice-President, shall act as Chairman at all meetings of the Council; and in the absence of both of them, the Chairman shall be elected from among their number by those present and voting.

11. (1) An elected member of the Council shall, unless he vacates his office earlier, hold office for a period of two years from the date of his election:

Tenure of
office of
Council
members

Provided that three of the six members elected pursuant to section 9 (3) (c) shall retire by agreement or by lot at the end of the first year and the remainder of the elected members shall retire at the end of the second.

(2) A member of the Council shall be eligible for re-appointment upon expiry of this term of office.

(3) Any casual vacancy arising among the elected members of the Council may be filled by the Council appointing another member registered under section 16 (1) or (2) and any such new member shall hold office for the remainder of the term of office of the vacating member.

(4) The office of an elected member of the Council shall ipso facto be vacated —

- (a) if for any reason he ceases to be a registered member of the Institute;
- (b) if he is absent from three consecutive meetings of the Council without its consent;
- (c) upon the presentation of a petition for his bankruptcy or upon execution of an unsatisfied judgment against his estate;
- (d) if he is convicted of any offence involving fraud or dishonesty;
- (e) if, by reason of mental or physical infirmity, he is incapable of discharging his duties as a member of the Council;
- (f) if he resigns his office by giving notice in writing to the Council.

12. Without prejudice to the generality of section 9 (1), the Council shall have power —

Power of
Council

- (a) to employ such professional, technical and administrative staff as may be deemed necessary and to lay down conditions of service for such employees;

- (b) to recommend to any meeting of the Institute the annual subscriptions, admission and other fees payable by members of the Institute on such dates as the Council may determine and to apply such subscriptions and fees as are approved by the Institute in accordance with section 5(3) of this Act;
- (c) to conduct examinations for applicants for registration, and to award certificates to such persons as have satisfied the examiners in such examinations;
- (d) to appoint Committees for such purposes and with such powers as will assist the Council in performing its functions;
- (e) subject to the provisions of this Act and regulations made hereunder to make rules affecting the Institute, the Council, Committees of the Council, Council members, staff of the Institute and persons studying or intending to become members;
- (f) to ensure compliance by members with the professional pronouncements of the Institute; and
- (g) generally, to exercise all the powers of the Institute except such powers as are expressly and exclusively reserved by this Act to the members of the Institute in general meeting.

Meetings
of Council
and its
Committee
Secretary
and
Registrar

13. The procedures for convening and conducting meetings of the Council and any Committees of Council shall be in accordance with the rules of the Institute.

14. (1) The Council shall appoint a Secretary who shall exercise and discharge the functions conferred on him by this Act, regulations made under this Act or rules made by the Institute.

(2) The Secretary shall act as Registrar for the Institute.

PART IV Registration of Accountants

Register
of members

15. (1) The Council shall cause to be maintained a register of members in which members shall be classified as:

- (a) Fellow Members;
- (b) Associate Members;
- (c) Registered Members; and
- (d) Licentiate Members;

(2) The register of members shall also contain the names of those members to whom practising certificates have been issued under section 19.

(3) The register of members shall at all reasonable times be available for inspection upon payment of such fees as the Council may prescribe.

Registration
as a member

16. (1) Any person other than a body corporate shall be eligible on making application in the prescribed form and on payment of the prescribed fee to be registered as an Associate Member, provided that he proves to the satisfaction of the Council that at the date of his application he —

- (a) (i) has attained the age of twenty-one years;
- (ii) is resident in Botswana;
- (iii) has passed such examination or examinations as may from time to time be prescribed by the Council; and
- (iv) is, in the opinion of the Council, a fit and proper person to be admitted as a member; or
- (b) is a member in good standing of such other institute or professional body of accountants as the Institute may recognise, that he is resident in Botswana and has satisfied the Council that he has adequate knowledge of the laws of Botswana; or
- (c) is a partner of a member resident and in public practice in Botswana and is a member in good standing of such other institute or professional body of Accountants as the Institute may recognise.

(2) A member who has been an Associate of the Institute continuously for a period of five years or of such other institute or professional body of accountants as the Institute may recognise, shall become a Fellow on the first day of January next following such completion.

- (3) (a) Any person other than a body corporate, who is not otherwise eligible for registration under subsection (1), shall be eligible on making application in the prescribed form and on payment of the prescribed fee to be registered as a Registered Member, provided that he proves to the satisfaction of the Council that he has passed the examination or examinations prescribed by the Council for a Registered Member and has had three years relevant practical experience.
- (b) Where an applicant for admission as a Registered Member has passed an examination or examinations which in the opinion of the Council is equivalent to those prescribed by the Council and has had the requisite accountancy experience, the Council may dispense with the examination for admission.
- (4) (a) Any person other than a body corporate, who is not otherwise eligible for registration under subsections (1) and (3), shall be eligible on making application in the prescribed form and on payment of the prescribed fee to be registered as a Licentiate Member, provided that he proves to the satisfaction of the Council that he has passed the examination or examinations prescribed by the Council for a Licentiate Member and has had two years relevant practical experience.
- (b) Where an applicant for admission as a Licentiate Member has passed an examination or examinations which in the opinion of the Council is equivalent to those prescribed

by the Council and has the requisite accountancy experience, the Council may dispense with the examination for admission.

(5) Any person resident and working in Botswana who is a member in good standing of an institute or association of accountants which is a member of the International Accounting Standards Committee or the International Federation of Accountants shall register as an Associate member of the Institute within ninety days from either the date of commencement of this Act or of taking up residence in Botswana:

Provided that any citizen of Botswana who, at the date of the commencement of this Act, has practised as an Accountant for a period of at least five years shall be entitled to be registered as a member of the Institute upon application made by him within ninety days of the commencement of this Act.

Offences
relating to
registration

17. Any person who —

- (a) makes or causes to be made an unauthorised entry, alteration or erasure in a register maintained under section 15, membership certificate, practising certificate, or any copy thereof; or
- (b) procures or attempts to procure for himself or any other person a membership certificate or practising certificate by means of fraudulent or false representations or the concealment of a material fact; or
- (c) fails to register as a member in accordance with section 16 (5),

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand pula or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

Membership
certificate
and fees

18. (1) Every person on being admitted as a member of the Institute shall be issued with a membership certificate by the Council under seal showing his class of membership.

(2) Every membership certificate shall remain the property of the Institute.

(3) The Institute may charge such membership fees as may be prescribed in the rules, and different fees may be prescribed for different classes of membership.

Practising
certificate

19. (1) No person shall practise as a public accountant in Botswana unless he is an Associate or Fellow Member of the Institute with an office or place of business in Botswana and has obtained a practising certificate from the Council:

Provided that a person practising as an auditor at the date of commencement of this Act shall be entitled to continue so to practise without registration for a period of ninety days from such date.

(2) A practising certificate shall be renewed annually upon the payment of the fees prescribed in the Second Schedule hereto and shall be displayed prominently at the place of practice of the member. The Minister may from time to time amend the fees set out in the Schedule.

(3) The Institute may, in accordance with its rules, issue a new practising certificate to a person whose practising certificate is cancelled, or re-register a person whose registration is cancelled.

(4) A member of the Institute who has been offered appointment as a receiver, receiver and manager, liquidator or trustee in bankruptcy over the property or affairs of any company or individual may accept appointment provided that he is a member registered under section 16 (1) or (2) and holds a practising certificate issued in accordance with this section.

(5) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand pula or to imprisonment for a period not exceeding one year or to both such fine and imprisonment:

Provided that nothing in this section shall operate to prevent —

- (a) a person from carrying on the work of a tax consultant or tax advisor;
- (b) any person who is a salaried employee of the Government or of any other employer from carrying on the work of an accountant or auditor;
- (c) any member of a club, institution or association which is not carried on with a view to profit from acting as auditor of such club, institution or association;
- (d) any Minister or public officer charged with the administration of any written law, from appointing or authorizing or approving of the appointment of any person not registered as an accountant in public practice under this Act, as auditor in respect of any undertaking regulated by such written law where in the opinion of such Minister or public officer, as the case may be, a person so registered is not readily available or by reason of the audit required or the amount of work involved therein the appointment of a person so registered is not warranted;
- (e) any person who has been appointed or whose appointment has been authorised or approved pursuant to sub-paragraph (d) from carrying out any audit in respect of which he has been so appointed or in respect of which his appointment has been so authorized or approved;
- (f) any member of the Institute, when so licensed by the Council, from issuing an accountant's certificate in respect of any financial statement prepared by him or prepared under his direction and supervision;

(g) the continuation in office and the renewal of appointment of an auditor authorized under section 124 of the Companies Act (Cap. 42:01.)

Association
of
Accountants

20. Members of the existing Association of Accountants immediately prior to the date of this Act shall be admitted hereafter to be fellows and Associates as appropriate by the Council of the Institute.

Disqualifi-
cation from
registration

21. (1) No person shall qualify for registration as a member in terms of section 16 if —

- (a) he has been convicted by a court of competent jurisdiction, whether in Botswana or elsewhere, of any offence involving fraud, theft, forgery, perjury or dishonesty;
- (b) he is an undischarged bankrupt or a receiving order in bankruptcy is in force against him;
- (c) he is certified as being of unsound mind;
- (d) he has been found guilty of a disciplinary offence by the Disciplinary Committee acting in accordance with Part V and his name has been removed from the register of members;
- (e) it is a company registered under the Companies Act.

(2) Any member who fails to pay the annual subscription applicable to him or any other subscription or payment due from him or any increased rate of subscription applicable to him on admission to a different class or category of membership before the expiration of three months after the same becomes due, shall thereupon cease to be a member:

Provided that the Council may in its absolute discretion re-admit to membership under such terms and conditions as the Council may consider appropriate any person who has ceased to be a member under this subsection.

Designatory
letters

22. (1) No person other than a person who has been registered as a member of the Institute in accordance with section 16 may, as appropriate, describe himself as:

- (a) a Fellow Member of the Botswana Institute of Accountants and may use after his name the designatory letters F.C.P.A. (Bots);
- (b) an Associate Member of the Botswana Institute of Accountants and may use after his name the designatory letters A.C.P.A. (Bots);
- (c) a Registered Member of the Botswana Institute of Accountants and may use after his name the designatory letters R.B.I.A.;
- (d) a Licentiate Member of the Botswana Institute of Accountants and may use after his name the designatory letters L.B.I.A.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand pula or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

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

Registered students

(2) The Secretary shall maintain a separate register of registered students of the Institute.

PART V *Discipline*

24. A member of the Institute shall be guilty of professional misconduct if he commits any of the acts or omissions set out in the First Schedule.

Professional misconduct

25. At the first meeting of the Council held after each annual general meeting of the Institute, or as soon as possible thereafter, the Council shall appoint a Disciplinary Committee consisting of five members of the Institute registered under section 16 (1) or (2) three of whom shall be members of the Council.

Disciplinary Committee

26. The functions of the Disciplinary Committee shall be to consider cases referred to it where the Council has reasonable grounds to believe, whether upon written complaint made to it or otherwise, that a member has acted in a manner which would give rise to disqualification under the provisions of section 21 of this Act or which amounts to professional misconduct as defined in the First Schedule of this Act.

Functions of Disciplinary Committee

27. The Disciplinary Committee shall conduct its proceedings in accordance with the rules of this Institute.

Proceedings of Disciplinary Committee

28. If, after inquiry, the Disciplinary Committee is of the opinion that the case under consideration has been proved wholly or in part, it shall make a finding to that effect and may make any one or more of the following orders against the defendant having regard to the nature and seriousness of the complaint —

Findings of Disciplinary Committee

- (i) that he be reprimanded or cautioned;
- (ii) that he be ineligible for a practising certificate;
- (iii) that his practising certificate be withdrawn;
- (iv) that he be suspended from membership for such period as shall be specified in the order;
- (v) that his name be removed from the register.

29. No person who has been suspended or whose name has been removed from the register under section 28 shall engage in public practice and his membership certificate shall be deemed to be cancelled until the period of suspension has expired or until

Effect of suspension or removal from register

his name has been restored to the register following application in writing to the Secretary.

30. (1) Any person aggrieved by a decision of the Disciplinary Committee made under section 28 may appeal therefrom to the High Court:

Providing that —

- (a) notice of such appeal, setting out the grounds of appeal, shall be served on the Secretary within 14 days after the decision of the Disciplinary Committee was communicated to him; and
- (b) the appeal shall be lodged with the High Court within 14 days after the notice referred to paragraph (a) was served on the Secretary.

(2) On any appeal under this section, the Institute shall be respondent.

(3) The decision of the Disciplinary Committee to suspend or remove the name of any accountant from the register and/or to withdraw or suspend his membership certificate and/or to withdraw his practising certificate shall be effective immediately, notwithstanding any appeal which may be pending unless either the Disciplinary Committee expressly suspended the operation of its decision pending the outcome of such appeal or the appellant has obtained from the High Court an order stating the operation of the decision of the Disciplinary Committee.

(4) The High Court may, on an appeal lodged under this section —

- (a) dismiss the appeal; or
- (b) direct the Council to register the appellant as a member, restore the appellant's name in the register or restore the appellant's membership certificate to him or restore the appellant's practising certificate to him, as the case may be; or
- (c) remit the case to the Disciplinary Committee for further consideration; or
- (d) generally, make such order in the appeal as it may deem just in the circumstances prevailing in each case, including an order as to costs:

Provided that no proceedings of the Disciplinary Committee shall be set aside by reason only of some irregularity in those proceedings if such irregularity did not occasion a substantial miscarriage of justice.

PART VI *General*

31. (1) The Council may, provided that a general meeting of the Institute has approved of them by a majority of two-thirds of the members voting in person or by proxy, promulgate rules for

giving effect to the provisions of this Act and such rules may provide for —

- (a) the procedure for and the terms upon which members may be admitted including the qualifications required, the issue of the membership and practising certificates, the fees payable by members on admission or renewal of membership and the times for payment of the same, and the manner in which such members shall cease to be members;
- (b) the practical experience required for registration as a member;
- (c) regulating meetings of the Institute, the Council and Committees of the Council, including delivery and sufficiency of notice of such meetings, quorum, voting adjournments and other matters of procedure or conduct of such meetings;
- (d) regulating the mode of nomination of members of the Institute for election to the Council;
- (e) regulating the mode of election of the President and Vice-President by the Council;
- (f) regulating the composition, functions and powers of Committees of the Council;
- (g) the training, education or examination of persons for admission as members and the fees payable therefor;
- (h) the classification from time to time of members including their rights, privileges and obligations;
- (i) the procedures of the Disciplinary Committee and the procedures relating to any complaint to such Committee;
- (j) the publication of findings of the Disciplinary Committee;
- (k) the issue by the Council of rules of professional conduct for regulating the activities of members;
- (l) regulating and administering the Institute in all matters within its powers;
- (m) the better execution of this Act and the furtherance of the objects of the Institute.

(2) The rules may from time to time be amended or added to upon the passing at a general meeting of a resolution to that effect by a majority of two-thirds of the members voting in person or by proxy on such resolution.

32. The Minister may, in consultation with the Council, make regulations prescribing anything which under this Act is to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

Regulatory powers of Minister

33. (1) The Council shall cause to be maintained minutes of proceedings of all meetings of the Institute, the Council and Committees of the Council in books and other records kept by them for the purpose.

Minutes of meetings

(2) The books and other records shall be made available to the Minister on his written request and to all persons who may be so authorised by him.

FIRST SCHEDULE

ACTS OR OMISSIONS CONSTITUTING PROFESSIONAL MISCONDUCT

Each of the following acts or omissions on the part of an accountant registered under this Act shall constitute professional misconduct namely:

- (a) allowing any other person to practice in his name as an accountant unless such person is also an accountant and is in partnership with or employed by him;
- (b) entering into partnership with any person other than an accountant or securing, either through or by means of a person not qualified to be an accountant or by means which are not open to an accountant, any professional business;
- (c) paying or allowing or agreeing to pay or allow, directly or indirectly to any person other than an accountant or a retired partner or the legal representative of such partner, any share, commission or brokerage out of the fees or profits for his professional services;
- (d) accepting or agreeing to accept any part of the fees or profits of the professional work of advocate, attorney, auctioneer, broker, or other agent who is not an accountant;
- (e) soliciting clients of professional work in a manner other than that approved by the Council of the Institute and as advised to members from time to time;
- (f) advertising professional attainment or services in a manner other than that approved by the Council of the Institute and as advised to members from time to time;
- (g) disclosing information acquired in the course of a professional engagement without the consent of the client, except as required by any law for the time being in force;
- (h) certifying or submitting in his name or in the name of his firm a report of an examination of financial statements (unless the examination of such statements) and the related records have been made by him or a partner or employee in his firm;
- (i) expressing his opinion on financial statements of any business or any enterprise in which he, his immediate family, his firm or partner in his firm has an interest, unless he discloses the interest also in his report; for the purpose of this Act "immediate family" means spouse, including a common law spouse, minor children, father and mother;
- (j) 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;
- (k) failing to disclose a material fact known to him, which is not disclosed in the financial statements, but disclosure of which is necessary for the financial statements to show a true and fair view;
- (l) failing to report a material mis-statement known to him which appears in the financial statements with which he is concerned in a professional capacity;
- (m) gross negligence in the conduct of professional duties;

- (n) failing to obtain sufficient information to warrant the expression of an opinion;
- (o) 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;
- (p) including in any statement, return or form to be submitted to the Council any particulars knowing them to be false;
- (q) carrying on the business of an accountant through a body corporate in a manner in breach of any of the above provisions constituting professional misconduct;
- (r) carrying on the business of an accountant in public practice, without having obtained a practising certificate;
- (s) generally, doing any act which is likely to bring the profession of accountancy or the Institute into disgrace, contempt or disrespect.

SECOND SCHEDULE

FEES

The following fees shall be payable for a practising certificate —

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|--|-----------------|
| 1. Member of less than five years standing as an Accountant | P500 per annum |
| 2. Member of between five years and ten years as an Accountant | P1000 per annum |
| 3. Member of over ten years standing as an Accountant | P1500 per annum |

PASSED by the National Assembly this 14th day of July, 1988.

C.G. MOKOBI,
Clerk of the National Assembly.