

# PROFESSIONS

## ACCOUNTANTS AND AUDITORS

### PUBLIC ACCOUNTANTS' AND AUDITORS' ACT 51 OF 1951

[ASSENTED TO 18 JUNE 1951] [DATE OF COMMENCEMENT: 1 NOVEMBER 1951]

*(Signed by the President)*

#### as amended by

Public Accountants' and Auditors' Amendment Act 47 of 1956  
Public Accountants' and Auditors' Amendment Act 64 of 1957  
Public Accountants' and Auditors' Amendment Act 30 of 1962  
Public Accountants' and Auditors' Amendment Act 68 of 1965  
Transvaal and Natal Societies of Chartered Accountants Act 66 of 1968  
General Law Amendment Act 80 of 1971  
Public Accountants' and Auditors' Amendment Act 53 of 1975  
Public Accountants' and Auditors' Amendment Act 91 of 1979  
Public Accountants' and Auditors' Amendment Act 42 of 1982  
Public Accountants' and Auditors' Amendment Act 12 of 1983  
Public Accountants' and Auditors' Amendment Act 48 of 1984  
Public Accountants' and Auditors' Amendment Act 51 of 1985  
Public Accountants' and Auditors' Amendment Act 45 of 1986  
Public Accountants' and Auditors' Amendment Act 9 of 1988  
Accountants' and Auditors' and Financial Institutions Amendment Act 92 of 1988  
Public Accountants' and Auditors' Amendment Act 3 of 1990  
Public Accountants' and Auditors' Amendment Act 10 of 1994

#### GENERAL NOTE:

**S. 8(b) of Act 10 of 1994 substituted in general "Namibia" for the Republic.**

#### ACT

**To provide for the establishment of a public accountants' and auditors board, for the registration of public accountants and auditors, for the regulation of the training of public accountants and auditors, and for other incidental matters.**

#### ARRANGEMENT OF SECTIONS

- 1 Definitions
- 2 Establishment of public accountants' and auditors' board
- 3 Constitution of board
- 4 Qualifications of members and vacation office
- 5 Tenure of office by members of board
- 6 Chairman and vice-chairman of the board
- 7 Meetings of board
- 8 Quorum majority decision and chairman's casting vote

- 9 Reports to Minister
- 10 Committees of board
- 11 Funds of board and keeping and audit of accounts
- 12 Remuneration and allowances of members of board and committees
- 13 to 20 inclusive .....
- 21 General powers of board
- 22 Prohibition on practising as public accountant and auditor by unregistered person
- 23 Registration of accountants and auditors
- 23A Restrictions in connection with non-resident accountants and auditors
- 23B Exemption of certain non-resident accountants and auditors
- 24 Articles of clerkship
- 25 Examinations
- 26 Powers and duties of auditors
- 26*bis* Information to be furnished by accountants and auditors
- 27 Disciplinary powers of board
- 28 Enquiry by board
- 28*bis* Suspension from practising of registered accountants and auditors who are mentally disabled
- 28*ter* Privileges of board
- 29 Admission to societies
- 30 Offences and penalties
- 31 and 32 .....
- 33 Application to South-West Africa
- 34 Short title and commencement

## 1 Definitions

In this Act, unless the context otherwise indicates-

**"advisory committee"**

[Definition of "advisory committee" deleted by sec 1(a) of Act 30 of 1962.]

**"articled clerk"** means a person who is duly bound to serve under articles of clerkship;

**"articles"** or **"articles of clerkship"** means a written contract whereby any person is duly bound to serve another for a specified period and is entitled to receive training in the profession of a public accountant and auditor;

**"board"** means the Public Accountants' and Auditors' board established under section *two*;

**"examining board"** means the South African Accountants Societies General Examining Board established in pursuance of an agreement entered into between the four societies and the Rhodesia Society of Chartered Accountants and signed on behalf of the four societies and the said Society during the period between the twentieth day of March and the twenty-ninth day of June, 1942;

[Definition of "examining board" substituted by sec 1(a) of Act 53 of 1975.]

**"institute"** means the Institute of Chartered Accountants of Namibia;

[Definition of "institute" inserted by sec 1(a) of Act 10 of 1994.]

**"Minister"** means the Minister of Finance;

**"prescribed"** means prescribed by or under this Act;

**"public accountant"** means a person who is engaged in public practice;

**"public practice"** means the practice of a person who performs the functions of an accountant or auditor, and for that purpose holds himself out as an accountant or auditor and places his services at the disposal of the public for reward, but does not include services which are substantially at the command of any one person or of the State;

[Definition of "public practice" amended by sec 1 of Act 47 of 1956.]

**"Republic"** .....

[Definition of "Republic" deleted by sec 1(b) of Act 10 of 1994.]

**"society"** means any one of the following societies, which are in this Act collectively referred to as the four societies, namely:

(a) The Transvaal Society of Chartered Accountants;

(b) The Cape Society of Chartered Accountants;

(c) The Natal Society of Chartered Accountants; and

(d) The Orange Free State Society of Chartered Accountants.

[Definition of "society" substituted by sec 1(b) of Act 53 of 1975.]

**"Union"** .....

[Definition of "Union" deleted by sec 1(c) of Act 30 of 1962.]

**"University"** means the University of Namibia established by section 2 of the University of Namibia Act, 1992 (Act 18 of 1992).

[Definition of "University" inserted by sec 1(c) of Act 10 of 1994.]

## **2 Establishment of public accountants' and auditors' board**

There is hereby established a board to be known as the Public Accountants' and Auditors' Board, which shall be a body corporate, capable of suing and being sued in its corporate name, and of performing all such acts as are necessary for or incidental to the carrying out of its objects and the performance of its functions and duties under this Act.

## **3 Constitution of board**

(1) The board shall consist of ten members appointed by the Minister, of whom-

(a) one shall be the Auditor-General;

- (b) four shall be officers in the public service who, in the opinion of the Minister, are in the performance of their duties concerned to a considerable extent with certificates, reports or opinions furnished by accountants or auditors;
- (c) one shall be a senior lecturer in accounting at the University, nominated for appointment by the Council of the University; and
- (d) four shall be persons nominated for appointment by the Institute.

[Subsec (1) substituted by sec 2(a) of Act 10 of 1994.]

(2) .....

[Subsec (2) amended by sec 2(b) of Act 47 of 1956 and deleted by sec 1(d) of Act 68 of 1965.]

(3) When an appointment is to be made of a member of the board referred to in paragraph (c) or (d) of subsection (1), the Minister shall by notice in writing request the Council of the University or the Institute, as the case may be, to nominate, within thirty days from the date the notice is given, a person or persons for appointment.

[Subsec (3) substituted by sec 2(b) of Act 10 of 1994.]

(4) If a nomination is not received by the Minister within the required period, the Minister may appoint any person whom the Minister thinks fit to be a member of the board and a member so appointed shall be deemed to have been appointed upon a nomination by the Council of the University or the Institute, as the case may be.

[Subsec (4) substituted by sec 2(c) of Act 10 of 1994.]

(5) The Minister may for each of the members of the board referred to in paragraph (b), (c) and (d) of subsection (1) appoint, in the same manner as such a member, a person to be the alternate of the member, and the Auditor-General may designate any officer of his or her office to be his or her alternate, and any such alternate of a member, may, in the event of the absence of such member from a meeting of the board, attend and take part in the proceedings of that meeting.

[Subsec (5) substituted by sec 2(d) of Act 10 of 1994.]

(6)(a) The Minister may, on the recommendation of the board, from time to time appoint a nominee of any body representing accountants and auditors in any of the neighbouring states of Namibia to be a member of the board, and any person so appointed shall hold office for such period, not exceeding one year, as the Minister may determine, and shall have the right to attend meetings of the board and to take part in the proceedings thereat, but shall not have the right to vote.

(b) The Minister may, on the recommendation of the board, from time to time appoint another nominee of a body referred to in paragraph (a) as an alternate to a member appointed in terms of that paragraph, and such alternate may, whenever the member to whom he has been appointed as alternate is absent from a meeting of the board, attend such meeting and take part in the proceedings thereat, but shall not have the right to vote.

[Subsec (6) amended by sec 2(c) of Act 47 of 1956 and by sec 2 of Act 30 of 1962 and substituted by sec 2(e) of Act 53 of 1975 and by sec 1(b) of Act 9 of 1988.]

(7) The name of every person appointed as a member of the board, and of every person appointed as an alternate to any member, together with the date from which the appointment takes effect, shall be notified in the *Gazette*.

#### **4 Qualifications of members and vacation office**

(1) No person shall be eligible for nomination or appointment as a member of the board referred to in paragraph (d) of subsection (1) of section 3, or as alternate to such member, unless he or she is registered as an accountant and auditor under this Act.

(2) The office of a member of the board appointed under paragraph (c) or (d) of subsection (1) of section 3 shall become vacant if such member-

- (a) resigns in writing to the Minister;
- (b) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (c) is absent from three consecutive meetings of the board without its leave;
- (d) being a member appointed under the said paragraph (c), ceases to be a senior lecturer in accounting at the University;
- (e) being a member appointed under the said paragraph (d), ceases to be registered as an accountant and auditor under this Act;
- (f) is removed from office by the Minister under the provisions of subsection (3).

(3) A member of the board appointed under paragraph (c) or (d) of subsection (1) of section 3 may be removed from office by the Minister if the Minister is of the opinion that such member-

- (a) is incapacitated by physical or mental illness; or
- (b) is otherwise unable or unfit to discharge the functions of a member of the board.

(4) The Minister may at any time, in his or her discretion, terminate the appointment of a member of the board referred to in paragraph (b) of subsection (1) of section 3.

[Sec 4 substituted by sec 4 of Act 10 of 1994.]

## **5 Tenure of office by members of board**

(1) Every member of the board, other than the Auditor-General, shall, subject to subsection (2) of section 4, hold office for a period of one year from the date of his or appointment, but shall on termination of the period for which he or she was appointed continue to hold office for a further period not exceeding three months until his or her successor has been appointed.

[Subsec (1) substituted by sec 4 of Act 10 of 1994.]

(2) Any person whose period of office as a member of the board has expired, including any person appointed under subsection (6) of section *three*, shall be eligible for re-appointment, but, subject to the provisions of subsection (1), no person shall hold office as a member of the board for more than six years during any period of nine years: Provided that in the computation of the total period for which any person has held office as a member of the board, any period during which he held office after the termination of a period for which he was appointed, but before the appointment of his successor, shall not be taken into consideration.

(3) Whenever the office of a member of the board becomes vacant before the expiration of the period for which he was appointed, the Minister may, subject to the applicable provisions of section *three*, appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed.

## **6 Chairman and vice-chairman of the board**

(1) The members of the board shall at their first meeting following their appointment and thereafter as occasion arises, out of their number elect a chairman and a vice-chairman of the board, and any person so elected shall hold office as such until he ceases to be a member of the board on the expiration in terms of section 5(1) of his current period of office, or by virtue of the provisions of section 4(2).

[Subsec (1) substituted by sec 4 of Act 53 of 1975.]

(2) If the chairman or the vice-chairman of the board vacates his office before the expiration of the period for which he was appointed as a member of the board, another member of the board shall, subject to the provisions of subsection (1), be elected as chairman, or vice-chairman, as the case may be, of the board.

(3) .....

[Subsec (3) deleted by sec 5 of Act 10 of 1994.]

(4) If for any reason the chairman is not able to act, the vice-chairman if able to do so, shall act in his stead.

[Sec 6 substituted by sec 3 of Act 47 of 1956.]

## **7 Meetings of board**

(1)(a) The board shall meet at least twice in every year.

(b) The time and place of a meeting of the board in terms of paragraph (a) shall be determined by the board from time to time.

[Subsec (1) amended by sec 4 of Act 47 of 1956 and substituted by sec 5 of Act 53 of 1975.]

(2) The chairman of the board may at any time call a special meeting of the board to be held at such time and place as he may determine, and shall, upon a written request signed by not less than three members of the board, call a special meeting thereof to be held within two weeks after the date of receipt of such request, at such time and place as he may determine.

## **8 Quorum majority decision and chairman's casting vote**

(1) A majority of all the members of the board shall form a quorum for any meeting of the board.

(2) The chairman shall preside at all meetings of the board at which he is present and, if both he and the vice-chairman are absent from any meeting, the members present thereat shall, subject to the provisions of subsection (3) of section *six*, elect one of their number to preside at such meeting.

[Subsec (2) amended by sec 5 of Act 47 of 1956]

(3) The decision of a majority of the members of the board present at any meeting thereof shall constitute a decision of the board, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(4) A member of the board may require the person presiding at any meeting to direct that his dissent from any resolution passed by the board, and the reasons for such dissent, be recorded in the minutes of the proceedings at which such resolution was passed.

(5) No decision or act done under the authority of the board shall be invalid by reason only of an interim vacancy on the board or of the fact that a person who is disqualified from being a member of the board, or with respect to whose appointment the provisions of this Act had not been observed, sat or acted as a

member at the time when the decision was taken or the act was performed or authorized, if the decision was taken or the act was performed or authorized by a majority of the members of the board present at the time who were entitled to sit and act as members.

## **9 Reports to Minister**

(1) The board shall in each year, within six months after the close of its financial year, submit to the Minister a report in regard to its activities during that financial year, together with a copy of the audited statement of income and expenditure and the balance sheet referred to in section 11(3) in respect of that financial year, and a list of persons on the register of accountants and auditors on a date specified in such list, being a date not earlier than the last day of that financial year.

[Subsec (1) substituted by sec 6 of Act 53 of 1975.]

(2) The chairman of the board may from time to time submit to the Minister reports in regard to matters connected with the activities of the board which in his opinion should be brought to the Minister's notice.

(3) Any three or more members of the board who are dissatisfied with a decision taken by the board in regard to any matter within its purview in terms of this Act, may communicate to the Minister their dissent from such decision and the reasons therefor, and the Minister may upon receipt of any such communication, require the board to furnish him with its observations in regard to such matter, together with any information he may deem necessary.

(4) The board shall at the request of the Minister or any person in the service of the State who is charged with the administration of any law, furnish to the Minister or such person advice on questions in connection with the accountancy and auditing profession or cognate matters, and shall communicate to the Minister information acquired by it, in the course of its duties, on matters regarded by it as being of public import.

(5) The Minister shall lay copies of every report submitted to him in terms of subsection (1), together with the annexures thereto, upon the Tables of both Houses of Parliament within fourteen days after receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

## **10 Committees of board**

(1) The board may establish committees to assist it in the performance of its functions and duties, and may appoint such persons, including persons other than members of the board, as it may deem fit to be members of any such committee.

(2) The board may assign to a committee so established such of its powers as it may deem fit, but shall not be deemed to be divested of any power which it may have assigned to a committee, and may amend or repeal any decision of any such committee: Provided that if the board has assigned to a committee the power to decide whether a person has passed an examination conducted in terms of section *twenty-five*, or the power to determine whether or not any person shall be registered as an accountant and auditor, or the power to cancel the registration of any person as an accountant and auditor, or the power to enquire into any case of alleged improper conduct, and to impose a punishment in respect thereof in accordance with the provisions of section *twenty-seven*, it shall not amend or repeal any decision arrived at or anything done by such committee under the power so assigned.

[Subsec (2) amended by sec 6 of Act 47 of 1956 and by sec 3(a) of Act 30 of 1962.]

(3) Any reference in this Act to the board in relation to the exercise of any power which it has assigned to a committee shall be construed as including a reference to that committee.

[Subsec (3) added by sec 3(b) of Act 30 of 1962.]

## **11 Funds of board and keeping and audit of accounts**

(1) The funds of the board shall consist of the fees received by it in pursuance of any provision made under section *twenty-one*, and such other amounts, including advances referred to in subsection (4), as may in terms of this Act from time to time become payable to the board.

(2) The board shall cause full and correct account to be kept of all amounts received or expended by it.

(3) The board shall cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year, and shall, after such statement and balance sheet have been audited by an auditor appointed by the board, cause copies thereof to be transmitted to every member of the board and to the Institute and also to every person registered as an accountant and auditor in terms of this Act.

[Subsec (3) substituted by sec 7(a) of Act 53 of 1975 and amended by sec 8(a)(i) of Act 10 of 1994.]

(4)(a) The Minister may, out of moneys appropriated by Parliament for that purpose, advance to the board such amounts as he may deem necessary in order to enable it to carry out its functions.

[Para (a) substituted by sec 7(b) of Act 53 of 1975.]

(b) Any such advance shall be made on such conditions and shall be repayable at such times as the Minister may determine.

## **12 Remuneration and allowances of members of board and committees**

(1) There shall be payable to a member of the board or a committee of the board, including any person appointed as an alternate to any such member (not being a member or person in the full-time service of the State), such remuneration for services rendered by him in connection with the work of the board and such allowances to cover expenses reasonably incurred by him in the performance of his duties as a member of the board or of any such committee, as the board may, with the approval of the Minister, determine.

(2) A member of the board or any such committee, who is in the full-time service of the State, may, in addition to his remuneration in respect of such service, receive such remuneration for special services rendered by him to the board, as may be determined by the Minister on the recommendation of the Public Service Commission, but not exceeding an amount recommended by the board.

(3) Any remuneration or allowances which may become payable under subsection (1) or (2), shall be paid out of the funds of the board.

(4) The board shall refund to the Treasury any transport and subsistence allowances, paid out of public funds to a member of the board appointed in terms of paragraph (a) or (b) of subsection (1) of section 3, or a person appointed or designated under subsection (5) of that section to act in his or her stead, or a member of a committee of the board (not being a member of the board), who is in the full-time service of the State, whilst engaged in connection with the business of the board or a committee thereof.



[Subsec (4) substituted by sec 2 of Act 9 of 1988 and by sec 6 of Act 10 of 1994.]

### **13 to 20 inclusive .....**

[Secs 13 to 20 inclusive repealed by sec 4 of Act 30 of 1962.]

## **21 General powers of board**

(1) The board shall have power-

- (a) to appoint such servants and to acquire or hire such movable or immovable property as it may consider necessary for the effective performance of its functions;
- (b) to determine the procedure at meetings of the board or any committee of the board;
- (c) to regulate service under articles of clerkship and to prescribe the fees which shall be payable to the board in respect of the registration or transfer of such articles, or in respect of the granting of exemption from service under articles or part thereof;

[Para (c) substituted by sec 8(a) of Act 53 of 1975.]

- (d) to prescribe the fees which shall be payable to the board in respect of the registration of any person as an accountant and auditor, and the annual fees (which may differ in respect of a registered accountant and auditor who is engaged in public practice and a registered accountant and auditor who is not so engaged) which shall be payable to the board by any person so long as he remains registered as an accountant and auditor and to determine what portion of such annual fees shall be payable in respect of any part of a year and the date on which such annual fees or portion thereof shall become due and payable;

[Para (d) amended by sec 7(a) of Act 47 of 1956.]

- (e) to prescribe syllabuses in respect of examinations for articled clerks or other persons, to prescribe or conduct or make arrangements for the conduct of such examinations, and to prescribe the fees which shall be payable to the board by such persons as the board may determine in respect of such syllabuses or examinations;

[Para (e) substituted by sec 8(b) of Act 53 of 1975 and by sec 3(a) of Act 9 of 1988.]

- (f) to prescribe the degrees, diplomas and other qualifications which shall entitle any person to exemption from the requirements to be complied with by persons desiring to be registered as accountants and auditors, as well as the fees which shall be payable to the board in respect of such exemption;

[Para (f) substituted by sec 8(c) of Act 53 of 1975.]

- (g) (i) to prescribe conduct constituting improper conduct by an accountant and auditor registered in terms of this Act, the manner in which an allegation or a charge of improper conduct shall be investigated and, if necessary, heard, and the punishments, including a fine, removal from the register, qualified, temporary or permanent disqualification for registration, suspension from practice for such period as the board may determine, a caution or a reprimand, which may be imposed by the board after such an investigation or hearing;

- (ii) to cause to be made known in a journal or other publication referred to in paragraph (h)bis, or in the public press, the name of an accountant and auditor (with or without the name of the firm with which he is associated) who has been heard as contemplated in subparagraph (i) and found guilty of improper conduct;

[Para (g) amended by sec 7(b) of Act 47 of 1956 and by sec 5 of Act 30 of 1962 and substituted by sec 1(a) of Act 48 of 1984 and by sec 1 of Act 92 of 1988 and subpara (ii) substituted by sec 1 of Act 3 of 1990.]

(g)bis .....

[Para (g)bis inserted by sec 3(a) of Act 68 of 1965 and deleted by sec 1(b) of Act 48 of 1984.]

- (h) to take any steps which it may consider expedient for the maintenance of the integrity, the enhancement of the status and the improvement of the standards of professional qualifications of accountants and auditors and to encourage research in connection with problems relating to any matter affecting the accounting profession;

(h)bis to finance, print, circulate, administer the publication of and generally to take any steps necessary to publish, a journal or any other publication relating to accounting and auditing and cognate matters;

[Para (h)bis inserted by sec 7(c) of Act 47 of 1956.]

(h)ter to invest its funds in such manner as it may deem fit;

[Para (h)ter inserted by sec 7(c) of Act 47 of 1956 and substituted by sec 3(b) of Act 68 of 1965 and by sec 8(d) of Act 53 of 1975.]

- (i) to assist in the provision of educational facilities for articled clerks and other persons desiring to become registered as accountants and auditors;
- (iA) to establish a fund for the purpose of compensating any person for loss or damage suffered by him as a result of dishonesty or negligence in the conduct of a public practice by any person registered as an accountant and auditor under this Act; to prescribe from time to time an amount which shall be payable to the board by way of contribution to such fund by any person so registered and engaged in public practice, and the times at which such amount shall be so payable; to provide for the administration of such fund by a board of control consisting of the chairman of the board (who shall be chairman of such board of control) and such other persons appointed by the board as the board may deem fit; and to prescribe or authorize such board of control to prescribe the circumstances under which and the conditions subject to which any payment may be made from such fund;

[Para (iA) inserted by sec 8(e) of Act 53 of 1975.]

(iB) to enter into an agreement with a body representing accountants and auditors in any of the neighbouring states of Namibia whereby the board undertakes to render assistance in connection with the performance by the said body of its functions, in such manner and on such conditions as may be agreed upon;

[Para (iB) inserted by sec 1 of Act 91 of 1979.]

(iC) (i) to prescribe that every person registered under this Act as an accountant and auditor and engaged in public practice, shall be

required to obtain professional indemnity insurance to cover any liability which he may incur as a result of negligence or dishonesty in the conduct of such practice;

- (ii) in connection with indemnity insurance referred to in subparagraph (i), to prescribe the minimum cover requirements to be complied with, the contingencies to be covered by such insurance and the circumstances under which a person who would otherwise be required to obtain such insurance, shall be exempt therefrom;

[Para (iC) inserted by sec 1 of Act 51 of 1985.]

- (j) generally to exercise the powers and perform the functions and duties specified in this Act.

(2) The board shall maintain separate registers in respect of articles of clerkship and of accountants and auditors registered under this Act, and such other registers as it may deem fit and any such register shall at all reasonable times be open to inspection by any member of the public upon payment of such fees as the board may prescribe.

(3) Any fines or fees prescribed by virtue of subsection (1) or (2), shall be subject to the approval of the Minister.

[Subsec (3) substituted by sec 8(f) of Act 53 of 1975 and by sec 3(b) of Act 9 of 1988.]

## **22 Prohibition on practising as public accountant and auditor by unregistered person**

After the expiration of a period of six months from the commencement of this Act or such further period as the board may in any particular case allow, no person shall-

- (a) engage in public practice as an accountant or auditor or hold himself out as an accountant or auditor in public practice or use any designation or description likely to create the impression that he is an accountant or auditor in public practice; or
- (b) accept an appointment or act as an auditor where the appointment of an auditor or the performance of an audit is required by law,

unless he is registered as an accountant and auditor in terms of this Act and has paid, at the rate applicable to a registered accountant and auditor who is engaged in public practice, the annual fees as may be prescribed or such portion thereof as may be determined the by board in terms of paragraph (d) of subsection (1) of section *twenty-one*: Provided that nothing in this section shall be deemed to prohibit-

- (i) any person employed exclusively at a salary and not carrying on business on his own account, from describing himself as an accountant or internal auditor in relation to the undertaking in which he is employed; or
- (ii) 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 if he receives no fee or other consideration for his services; or
- (iii) any person from practising and describing himself as a secretary, bookkeeper or cost consultant; or
- (iv) any Minister of State, Administrator or officer charged with the administration of any law, from appointing or authorizing or approving of the appointment of any person not registered as an accountant and

auditor in terms of this Act, as auditor in respect of any undertaking regulated by that law where in the opinion of such Minister or officer a person so registered is not readily available or by reason of the nature of the audit required or the amount of work involved therein or any other circumstances contemplated by such law, the appointment of a person so registered is not warranted; or

- (v) the Controller and Auditor-General from appointing any person not registered as an accountant and auditor under this Act as an auditor to carry out on his behalf any audit which he is in terms of any law required to undertake; or
- (vi) a person who has been appointed or whose appointment has been authorized or approved in terms of subparagraph (iv) or (v) from carrying out any audit in respect of the undertaking in respect of which he has been so appointed or in respect of which his appointment has been so authorized or approved.

[Sec 22 amended by sec 4 of Act 68 of 1965.]

### **23 Registration of accountants and auditors**

(1) Any person who desires to be registered as an accountant and auditor shall in writing lodge with the board an application for such registration accompanied by the prescribed fee and such information as the board may require.

(2) If after consideration of any such application, the board is satisfied that the applicant-

- (a) is not less than twenty-one years of age and is ordinarily resident in Namibia;
- (b) has, except to the extent to which he has been exempted therefrom in terms of this Act, served under articles of clerkship for the prescribed period and passed the prescribed examinations,

the board shall, subject to the provisions of subsection (6), register the applicant as an accountant and auditor and issue to him a certificate of registration in such form as it may prescribe.

(3) Any person who at the date of commencement of this Act-

- (a) was a member in good standing or was qualified to become a member of a society; or
- (b) was a member in good standing of-
  - (i) any branch of the Society of Incorporated Accountants and Auditors established in Namibia;
  - (ii) the South African branch of the Association of Certified and Corporate Accountants;
  - (iii) the Institute of Accountants of South Africa, Limited; or
  - (iv) the Association of Practising Accountants of South Africa, and who had been such a member on the first day of January, 1950; or
- (c) was resident in Namibia and had passed a final examination, considered by the board to be of a sufficiently high standard, conducted by any

organized body of accountants and auditors and, had had not less than five years practical experience, considered by the board to be of a sufficiently varied and satisfactory nature, in the office of a person who practised as a public accountant or in an accounting practice carried on by himself; or

- (d) was serving or had completed service in Namibia with a member of a society or of a body mentioned in paragraph (b) of this subsection, under articles of clerkship which have subsequently been registered with the board as provided in paragraph (b) of subsection (4), or (where such articles had been completed) in respect of which notice has been given to the board as provided in the lastmentioned paragraph, and who has-
- (i) in the case of a person who was serving or had completed service under articles with a member of a society, satisfied the requirements for admission to that society; or
  - (ii) in the case of a person who was serving or had completed service under articles with a member of any such body satisfied the requirements for admission to that body, in accordance with its constitution and by-laws as in force on the first day of January, 1950; or
- (e) was resident in Namibia and was registered as a student with any of the bodies referred to in paragraph (b), and who was so registered on the first day of January, 1950, and has on or before the thirty-first day of December, 1954, satisfied the requirements for admission to that body in accordance with its constitution and by-laws as in force on the first day of January, 1950, and has on or before the thirty-first day of December, 1956, had not less than five years' practical experience in the office of an accountant in public practice which in the opinion of the board was of a sufficiently varied and satisfactory nature;

[Para (e) amended by sec 6(a) of Act 30 of 1962.]

(f) .....

[Para (f) deleted by sec 6(b) of Act 30 of 1962.]

shall be deemed to have complied with the requirements of paragraph (b) of subsection (2), and for the purpose of paragraph (a) or (b) of this subsection, a certificate from a society or a body referred to in the lastmentioned paragraph that any person is a member in good standing of such society or body, shall be accepted by the board as proof of such membership and standing.

(4) No person shall be registered as an accountant and auditor by virtue of the provisions of subsection (3), unless-

- (a) in the case of a person referred to in paragraph (c) of that subsection, he has applied to the board to be so registered within six months after the commencement of this Act, or within such further period as the board may in any particular case allow; or

[Para (a) amended by sec 6(c) of Act 30 of 1962.]

- (b) in the case of a person referred to in paragraph (d) or (e) of that subsection, he has applied to the board for the registration of his articles of clerkship or, if such articles had been completed at the

commencement of this Act, has given written notice to the board accordingly, or has applied to the board for registration as a student, as the case may be, within three months after such commencement, or within such further period as the board may in any particular case allow.

[Para (b) amended by sec 6(d) of Act 30 of 1962.]

(4)*bis* (a) Any person who desires to be registered as a non-resident accountant and auditor shall in writing lodge with the board an application for such registration accompanied by the prescribed fee and such information as the board may require.

(b) If, after consideration of any such application, the board is satisfied that the applicant-

- (i) is not less than twenty-one years of age and is not ordinarily resident in Namibia;
- (ii) is a member of an organized body of accountants and auditors recognized by the board for the purposes of this subsection;
- (iii) is a partner of a registered accountant and auditor ordinarily resident in and engaged in public practice in Namibia or has furnished the board with a written undertaking approved by the board that upon or after registration he will be admitted into partnership with a registered accountant and auditor ordinarily resident in and engaged in public practice in Namibia,

the board shall, subject to the provisions of subsection (6), register the applicant as a non-resident accountant and auditor and issue to him a certificate of registration in such form as it may prescribe.

(c) Wherever in this Act the expression "accountant and auditor" is used, the expression shall, unless the context otherwise indicates, be deemed to refer also to a "non-resident accountant and auditor".

[Subsec (4)*bis* inserted by sec 1(a) of Act 64 of 1957.]

(5) The board may, in the case of a person referred to in paragraph (d) or (e) of subsection (3), accept the passing of an examination prescribed by it and compliance with such other requirements as it may determine as equivalent to compliance by that person with the requirements set out in the relevant paragraph: Provided that the requirements so determined shall not, in the case of a person referred to in paragraph (d) of subsection (3) include a requirement that such person serve under articles for a period which, together with any period already served under the articles registered with the board in terms of paragraph (b) of subsection (4), exceeds the period for which such person was required to serve under such lastmentioned articles.

(6) The board shall not register any person as an accountant and auditor under this section-

- (a) if he has at any time been removed from an office of trust on account of misconduct; or
- (b) if he has at any time been convicted of theft, fraud, forgery or uttering a forged document or perjury, and sentenced in respect thereof to imprisonment without the option of a fine or to a fine exceeding three hundred rand; or

[Para (b) amended by sec 9 of Act 53 of 1975 and substituted by sec 4 of Act 9 of 1988.]

- (c) if he is of unsound mind; or
- (d) if he is disqualified for registration in terms of a punishment imposed under this Act,

[Para (d) inserted by sec 6(f) of Act 30 of 1962.]

and may refuse so to register any person who is an unrehabilitated insolvent or who has entered into an arrangement with his creditors or who has been guilty of conduct by reason whereof he is in the opinion of the board not a fit person to be registered.

[Subsec (6) amended by sec 6(g) of Act 30 of 1962.]

(7) The board shall cancel the registration as an accountant and auditor of any person who subsequent to his registration becomes subject to any of the disqualifications mentioned in paragraph (a) or (b) of subsection (6), and may cancel the registration of any person whose estate is sequestrated or who enters into an arrangement with his creditors or whose registration was made in error or on information subsequently proved to be false or who has prior to his registration been guilty of conduct by reason whereof he is in the opinion of the board not a fit person to be registered.

[Subsec (7) amended by sec 6(h) of Act 30 of 1962.]

(7)*bis* The board shall cancel the registration as a non-resident accountant and auditor of any person who-

- (i) subsequent to his registration becomes ordinarily resident in Namibia; or
- (ii) does not within six months after the date of his registration produce proof to the satisfaction of the board that he has been admitted into partnership with a registered accountant and auditor ordinarily resident in and engaged in public practice in Namibia; or
- (iii) ceases to be a partner of a registered accountant and auditor ordinarily resident in and engaged in public practice in Namibia and does not within six months thereafter produce proof to the satisfaction of the board that he has been admitted into any other partnership with such a registered accountant and auditor; or
- (iv) is in partnership with a registered accountant and auditor who has ceased to be engaged in public practice in Namibia or with a person whose registration as an accountant and auditor has been cancelled or has lapsed under or by virtue of any of the provisions of this Act unless he produces proof to the satisfaction of the board within six months thereafter that such partnership has been dissolved and that he has been admitted into partnership with another registered accountant and auditor ordinarily resident in and engaged in public practice in Namibia; or
- (v) becomes subject to any of the disqualifications referred to in this Act other than that set out in paragraph (a) of subsection (8).

[Subsec (7)*bis* inserted by sec 1(b) of Act 64 of 1957.]

(8) The registration of any person as an accountant and auditor shall lapse if such person-

- (a) ceases permanently to reside in Namibia; or

- (b) fails to pay any annual fee or portion thereof prescribed under paragraph (d) of subsection (1) of section *twenty-one* and payable by him within three months after such fee or portion thereof becomes due or within such further period as the board may in any particular case allow.

[Subsec (8) amended by sec 8(a) of Act 47 of 1956.]

(9)(a) Subject to the provisions of subsection (6), the board shall on application to it register as an accountant and auditor any person who was previously registered as an accountant and auditor under this Act, if he possesses the prescribed residential qualifications and has paid the prescribed registration fee and any arrear annual fee.

(b) Paragraph (a) shall not apply in respect of a non-resident accountant and auditor.

[Subsec (9) substituted by sec 6(i) of Act 30 of 1962.]

(10) The board shall, at the written request of any accountant and auditor registered as such under this Act, remove his name from the register, but the removal shall not affect any liability incurred by such accountant and auditor prior to the date of such request.

(11) A person who is registered under this section as an accountant and auditor, may describe himself as a registered accountant and auditor, and shall, if he has paid the annual fees (or portion thereof) prescribed by the board in terms of paragraph (d) of subsection (1) of section *twenty-one* at the rate applicable to a registered accountant and auditor who is engaged in public practice, be entitled to describe himself as a public accountant or a public accountant and auditor and to engage in public practice in any part of Namibia.

[Subsec (11) amended by sec 8(b) of Act 47 of 1956 and by sec 6(j) of Act 30 of 1962.]

### **23A Restrictions in connection with non-resident accountants and auditors**

(1) No person-

- (a) who is registered under this Act as a non-resident accountant and auditor shall become a member of a partnership of accountants and auditors engaged in public practice of which more than half the members are persons registered as non-resident accountants and auditors or of which more than half the members would be such persons if he became a member thereof;
- (b) who is a member of a partnership referred to in paragraph (a) shall permit a person registered as a non-resident accountant and auditor to become a member of that partnership;
- (c) shall after the expiration of a period of six months (or such longer period as the board may in any particular case allow) as from the commencement of this section be a member of a partnership of accountants and auditors engaged in public practice of which more than half the members are persons registered as non-resident accountants and auditors.

(2) No person registered under this Act as a non-resident accountant and auditor may, in the capacity of an accountant or auditor, in his own name or in the name of the partnership of accountants and auditors of which he is a member, certify, or furnish a report or an opinion on, any financial statement (including any annexure thereto) or other document relating to the operations in Namibia of an undertaking



registered or established in Namibia under any law or carrying on business in Namibia.

[Sec 23A inserted by sec 10 of Act 53 of 1975.]

### **23B Exemption of certain non-resident accountants and auditors**

(1) The board may on such conditions as it may determine, exempt a person who is ordinarily resident in a neighbouring state of Namibia and is registered in terms of this Act as a non-resident accountant and auditor or desires to be registered as such, from any or all of the provisions of sections 23(4)*bis* (b)(ii) and (iii) and (7)*bis* (ii), (iii) and (iv) and 23A in so far as such provisions apply to such person.

(2) An exemption referred to in subsection (1) may be withdrawn by the board by giving the exempted person six months written notice of the withdrawal of his exemption: Provided that the exemption of a person who contravened or failed to comply with a condition of his exemption, may be withdrawn by the board summarily.

[Sec 23B inserted by sec 2 of Act 91 of 1979.]

### **24 Articles of clerkship**

(1) Subject to the provisions of subsection (3) no service under articles of clerkship entered into after the commencement of this Act shall be recognized for the purpose of this Act unless such articles have been registered with the board, and no articles shall be so registered unless the person with whom service is to be performed thereunder has obtained the consent of the board to engage a clerk under articles, which consent shall not be given unless the board is satisfied that such person is actively engaged in Namibia, either on his own account or in partnership, in public practice of such a character as to ensure that the clerk will obtain a sufficiently wide and general practical training and experience and unless there has been lodged with the board-

- (a) evidence of the date of birth of the person to be engaged in terms of the said articles; and
- (b) in the case of articles to be registered before the first day of January, 1972, a certificate to the effect that a degree, other than an honorary degree, prescribed by the board has been conferred upon such person or to the effect that such person has passed the matriculation examination of the Joint Matriculation Board or an examination certified by that Board to be equivalent to such matriculation examination or to entitle such person to exemption therefrom; or
- (c) in the case of articles to be registered on or after the first day of January, 1972-
  - (i) a certificate to the effect that a degree, other than an honorary degree, approved by the board has been conferred upon such person; or
  - (ii) a certificate to the effect that such person has passed the matriculation examination of the Joint Matriculation Board or an examination certified by that Board to entitle such person to exemption therefrom: Provided that such certificate shows that, at the examination in question, such person passed in mathematics and achieved in that subject a standard not lower

than a standard prescribed by the board, either generally or with reference to that examination; or

[Subpara (ii) amended by sec 11(a) of Act 53 of 1975.]

- (iii) a certificate to the effect that such person has been exempted conditionally from the said matriculation examination, and proof to the satisfaction of the board that he achieved in mathematics or a related subject a standard which the board considers to be adequate; or

[Subpara (iii) added by sec 11(b) of Act 53 of 1975.]

- (iv) in the case of a person who passed in an examination contemplated in subparagraph (ii) but did not pass in mathematics or obtain the standard required by that subparagraph, a certificate to the effect that he did thereafter so pass or achieve the required standard, and, in the case of a person to whom a certificate contemplated in subparagraph (iii) was issued but who could not furnish proof that he achieved in mathematics or a related subject the standard required by that subparagraph, a certificate to the effect that he did thereafter achieve the required standard.

[Subsec (1) amended by sec 9(a) of Act 47 of 1956 and by sec 7 of Act 30 of 1962, substituted by sec 5 of Act 68 of 1965 and amended by sec 2(a) of Act 92 of 1988 and subpara (iv) added by sec 2(1)(b) of Act 48 of 1984.]

(2) The board shall determine the maximum number of clerks who may be engaged for service under articles by any person during any particular period: Provided that where an articed clerk is unable to complete his articles with the person by whom he has been engaged for service under such articles or the board is satisfied that it is in the interests of an articed clerk that he should be transferred under articles to some other person, the board may authorize his transfer under articles to some other person, irrespective of the number of clerks serving under articles with that other person.

[Subsec (2) substituted by sec 5 of Act 68 of 1965 and amended by sec 11(c) of Act 53 of 1975.]

(3) The period of service under articles shall be five years commencing on the date on which such articles are lodged with the board for registration or on such earlier date as the board may in any particular case direct: Provided that any period of training, in terms of section 3 of the Defence Act, 1957 (Act 44 of 1957), in the South African Defence Force (including any training in the South African Police which in terms of that Act is regarded as service for the purposes of any of its provisions), undergone by a person who is serving under articles or who enters into articles after such training shall, subject to a maximum period of three months, be deemed to have been served under articles: Provided further that the board may-

- (a) in the case of a person who has obtained a degree, other than an honorary degree, prescribed by the board, grant exemption from part of the period of service under articles to such extent as it may deem fit; or
- (b) in the case of a person who, in the opinion of the board, has obtained satisfactory practical training and experience by way of service under articles either within or outside Namibia or partly within and partly outside Namibia, reduce the period of service under articles to such extent as it may deem fit or grant exemption from service under articles; or

- (c) in the case of a person who, in the opinion of the board, has obtained satisfactory practical training and experience of not less than six years' duration outside Namibia in the office of a practising accountant who is a member of an organized body of accountants recognized by the board for this purpose or in an accounting practice carried on by himself as a member of such a body, reduce the period of service under articles to such extent as it may deem fit or grant exemption from service under articles; or
- (d) in the case of a person who at the first day of January, 1950, had, in the opinion of the board, obtained satisfactory practical training and experience of not less than six years' duration in Namibia in the office of a member of the Institute or of one of the bodies referred to in paragraph (b) of subsection (3) of section *twenty-three*, reduce the period of service under articles to such extent as it may deem fit or grant exemption from service under articles; or

[Para (d) amended by sec 8(a) of Act 10 of 1994.]

- (e) in the case of a person who lodged a certificate contemplated in subsection (1)(c)(iv) and who was in the full-time service of a registered accountant and auditor in public practice, and who, during the time that he was so in service, performed the same duties as a clerk under articles of clerkship, reduce the period of service under articles by the period that he was so in service, but not exceeding 12 months.

[Subsec (3) amended by sec 9(b) and (c) of Act 47 of 1956, substituted by sec 5 of Act 68 of 1965 and amended by sec 11(d) of Act 53 of 1975 and by sec 2(b) of Act 92 of 1988 and para (e) added by sec 2(1)(d) of Act 48 of 1984.]

(4) Whenever the service of an articulated clerk is terminated before he has served the prescribed period under articles, the board may in its discretion and on such conditions as it may deem fit, approve of the transfer of such clerk to some other person to complete the remaining portion of his period of service under articles.

(5) No person shall accept any payment or other reward in consideration of the engagement by him of any other person under articles of clerkship.

(6) No person who is registered as a non-resident accountant and auditor by virtue of the provisions of paragraph (b) of subsection (4)*bis* of section *twenty-three* shall be entitled to have any clerk articulated to him in Namibia.

[Subsec (6) added by sec 2 of Act 64 of 1957.]

## 25 Examinations

(1) The examinations to be passed by persons desiring to qualify for registration as accountants and auditors shall, subject to the provisions of subsection (3) of section *twenty-three*, be as prescribed by the board: Provided that pending a date to be fixed by the Minister by notice in the *Gazette*, the examining board may conduct examinations for such persons, and any person who has passed in any examination conducted by the examining board shall be deemed to have passed in the corresponding examination prescribed by the board.

(2) As soon as may be after the date fixed by the Minister under subsection (1), the examining board shall deliver to the board all documents in its possession or under its control relating to the examinations theretofore conducted by it, and the board shall thereafter assume full responsibility for the conduct of all examinations prescribed by it.

(3) The board may, instead of itself conducting any examination prescribed by it, make arrangements for such examinations or any part thereof to be conducted on its behalf by any one or more universities or institutions approved by the Minister, and may determine the conditions subject to which such examinations shall be so conducted.

(3) *bis* The board may require any person desiring to enter for any of the examinations prescribed by it, as a necessary prerequisite to so entering, to obtain from a university in Namibia such degree, diploma, or certificate as it may determine or to pass such examinations conducted by a university in Namibia as the board may determine.

[Subsec (3)*bis* inserted by sec 10(a) of Act 47 of 1956.]

(4) Any person entering as a candidate for an examination referred to in this section including any examination conducted by the examining board, shall indicate whether he wishes to write the examination in English or Afrikaans, and all examination papers shall be supplied to that person and may be answered by him in the language so indicated.

(5) The board may exempt from the obligation to pass in any examination referred to in this section, any person who-

- (a) has passed outside Namibia any examination prescribed or approved by the board: Provided that no such person shall be registered as an accountant and auditor until he has passed such examination in the law of Namibia as the board may determine: Provided further that no person shall be allowed to sit for such examination unless he has furnished proof to the satisfaction of the board that he is permanently resident in Namibia, the Republic of Bophuthatswana, the Republic of Ciskei or the Republic of Venda; or

[Para (a) substituted by sec 2 of Act 51 of 1985.]

- (b) has obtained a degree other than an honorary degree, or a university diploma or a university certificate prescribed or approved by the board: Provided that exemption shall be given only in respect of such part or parts of the examinations as the board may deem fit; or

[Para (b) amended by sec 10(b) of Act 47 of 1956.]

- (c) has obtained a diploma in the accountancy branch of the Institute of Administration and Commerce of South Africa, or has by examination obtained such other qualifications as in the opinion of the board have afforded him suitable training and proficiency in accountancy: Provided that exemption shall be given only in respect of such part or parts of the examinations as the board may deem fit.

## **26 Powers and duties of auditors**

(1) No person acting in the capacity of auditor to any undertaking shall, without such qualification as may be appropriate in the circumstances, in pursuance of any audit carried out by him in that capacity, certify or report or express an opinion to the effect that any financial statement, including any annexure thereto, which relates to such undertaking, presents fairly, or gives a true and fair view of, or reflects correctly, the affairs of such undertaking and the results of its operations, or the matters dealt with in such financial statement or annexure, as the circumstances may require, unless-

- (a) he has carried out such audit free of any restrictions whatsoever;

- (b) proper accounting records in one of the official languages of Namibia, or in the case of the territory of South-West Africa, in one of such languages or in the German language, have been kept in connection with the undertaking in question, so as to reflect and explain all its transactions and record all its assets and liabilities correctly and adequately;
- (c) he has obtained all information, vouchers and other documents which in his opinion were necessary for the proper performance of his duties;
- (d) he has, in the case of an undertaking regulated by any law, complied with all the requirements of that law relating to the audit of that undertaking;
- (e) he has by means of such methods as are reasonably appropriate having regard to the nature of the undertaking in question satisfied himself of the existence of all assets and liabilities shown on such financial statement or annexure;
- (f) he is satisfied, as far as is reasonably practicable having regard to the nature of the undertaking in question and of the audit carried out by him, as to the fairness or the truth or the correctness, as the case may be, of such financial statement or annexure;
- (g) any matter referred to in subsection (3) had, at the date on which he so certified or reported, or expressed such opinion, been adjusted to his satisfaction.

[Subsec (1) amended by sec 11 of Act 47 of 1956 and by sec 8(a) to (g) of Act 30 of 1962 and substituted by sec 12(a) of Act 53 of 1975.]

(1)*bis* No accountant or auditor shall, when acting otherwise than in pursuance of an audit, certify or report, or express an opinion, without such qualification as may be appropriate in the circumstances, to the effect that any account, financial statement (including any annexure thereto) or other document relating to the business or financial affairs of any undertaking, presents fairly, or gives a true and fair view of, or reflects correctly, the matters dealt with therein, unless he has *mutatis mutandis* complied with the provisions of paragraphs (a), (c) and (f) of subsection (1).

[Subsec (1)*bis* inserted by sec 8(h) of Act 30 of 1962 and substituted by sec 12(b) of Act 53 of 1975.]

(1)*ter* If any accountant or auditor or his partner or any person employed by him or his partner or any person working under his supervision and control or under the supervision and control of his partner, was responsible for keeping the books, records or accounts of an undertaking, except to the extent of making closing entries or assisting with any adjusting entries or framing any balance sheet, account, statement or other document from existing records, such accountant or auditor shall, in certifying or reporting on anything in connection with the business or financial affairs of such undertaking, indicate that, as the case may be, he or his partner or a person employed by him or his partner or a person working under his supervision and control or under the supervision and control of his partner was responsible for keeping such books, records or accounts.

[Subsec (1)*ter* inserted by sec 8(h) of Act 30 of 1962.]

(2) Any certificate required to be given or report to be made or opinion to be expressed by an accountant or auditor in his capacity as accountant or auditor in

pursuance of any assignment carried out by him, shall be given or made or expressed within a period of four months after the date on which the assignment was completed, and if such accountant or auditor is unable to give an unqualified certificate or make an unqualified report or express an unqualified opinion, he shall within the said period give that certificate or make that report or express that opinion subject to such qualifications as he may deem necessary, and may, if he considers it advisable, endorse on that certificate, report or opinion the reasons for any such qualification.

[Subsec (2) substituted by sec 8(i) of Act 30 of 1962 and by sec 12(c) of Act 53 of 1975.]

(3)(a) If any person acting in the capacity of auditor to any undertaking is satisfied or has reason to believe that in the conduct of the affairs of such undertaking a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the undertaking or to any of its members or creditors, he shall forthwith despatch a report in writing to the person in charge of that undertaking giving particulars of the irregularity, at the same time drawing the attention of such person in charge to the provisions of paragraphs (b) and (c) and requesting him to acknowledge receipt of such report in writing.

(b) Unless within thirty days after an auditor has despatched such a report, he has been satisfied that no such irregularity has taken place or is taking place or that adequate steps have been taken for the recovery of any such loss caused as aforesaid or for the prevention of any such loss likely to be caused as aforesaid, he shall forthwith furnish the board with copies of the report and of any acknowledgement of receipt thereof and reply thereto and such other particulars as he may deem fit.

(c) The board may disclose to any attorney-general or any officer in the public service or any member or creditor of the undertaking concerned any information supplied to it in terms of paragraph (b).

(d) For the purpose of determining whether any irregularity contemplated by this subsection has taken place or is taking place, an auditor may carry out such investigations as he may deem fit.

(e) Nothing in this subsection contained shall be construed as conferring upon any person any right of action against an auditor, which, but for the provisions of this subsection, he would not have had.

[Subsec (3) substituted by sec 8(j) of Act 30 of 1962.]

(3A)(a) If any person who was acting in the capacity of auditor to any undertaking immediately prior to its sequestration or liquidation (whether provisional or final), is satisfied or has reason to believe that at or before the date of the sequestration or liquidation a material irregularity in the conduct of the affairs of such undertaking was taking place or had taken place, which had caused or was likely to cause financial loss to the undertaking or to any of its members or creditors, and such person did not comply with the provisions of subsection (3)(a) in respect of such irregularity before the said date, he shall forthwith despatch a report in writing, giving particulars of such irregularity, to the person appointed as trustee or provisional trustee, or as liquidator or provisional liquidator, as the case may be, of such undertaking, and at the same time supply copies of such report to the person in charge of such undertaking and the board.

(aA) If any person who was acting in the capacity of auditor to any undertaking immediately prior to its sequestration or liquidation (whether provisional or final) and who has not taken action in terms of subsection (3)(a) or despatched a report in writing in terms of paragraph (a) of this subsection, is at any time requested in

writing to do so by the person appointed as trustee or provisional trustee or as liquidator or provisional liquidator, as the case may be, of such undertaking, he shall forthwith inform the person so requesting whether or not a report in writing is required by paragraph (a) of this subsection, and in the event of his informing the person so requesting that such report is so required, he shall forthwith despatch the report to him, and at the same time supply copies of such report to the person in charge of such undertaking and to the board.

[Para (aA) inserted by sec 1(b) of Act 42 of 1982.]

(b) The provisions of subsection (3)(c) shall *mutatis mutandis* apply with reference to any information supplied to the board in terms of paragraph (a) of this subsection, and the provisions of subsection (3)(e) shall *mutatis mutandis* apply with reference to any provision of this subsection.

[Subsec (3A) inserted by sec 12(d) of Act 53 of 1975 and para (b) substituted by sec 1(c) of Act 42 of 1982.]

(3B) An auditor shall, in carrying out any duty referred to in subsections (3) and (3A), have regard to all the information which comes to his knowledge in his capacity of auditor to any undertaking and all the information which comes to his knowledge from any other source.

[Subsec (3B) inserted by sec 1 of Act 45 of 1986.]

(4) If a person who has been registered as an accountant and auditor under this Act-

(a) fails to perform any duties devolving upon him in the capacity of an auditor to any undertaking with such a degree of care and skill as in the opinion of the board may reasonably be expected; or

(b) is negligent in the performance of such duties,

the board may, whether or not such auditor is liable to be or has been criminally charged or has been convicted in respect of such failure or negligence, enquire into the circumstances, and if such failure or negligence is proved to its satisfaction, impose upon that person any of the punishments prescribed under paragraph (g) of subsection (1) of section *twenty-one*, as it may deem fit: Provided that no such person shall incur liability to punishment by the board by reason of any opinion expressed by him in good faith as to the value or amount of any asset or liability appearing on the balance sheet in respect of the undertaking in connection with which the audit was carried out, or by reason of his having declined to express any opinion thereon, if the board is satisfied that, having regard to the nature of such asset or liability or any other circumstances, he could not reasonably have been expected to express an authoritative opinion.

(5) Any auditor or any person registered as an accountant and auditor under this Act shall, in respect of any opinion expressed or certificate given or report or statement made or statement, account or document certified by him in the ordinary course of his duties-

(a) incur no liability to his client or any third party, unless it is proved that such opinion was expressed or such certificate was given or such report or statement was made or such statement, account or document was certified maliciously or pursuant to a negligent performance of his duties; and

(b) where it is proved that such opinion was expressed or such certificate was given or such report or statement was made or such statement, account or document was certified pursuant to a negligent performance of his

duties, be liable to any third party who has relied on such opinion, certificate, report, statement, account or document, for financial loss suffered as a result of having relied thereon, only if it is proved that the auditor or person so registered-

- (i) knew or could in the particular circumstances reasonably have been expected to know, at the time when the negligence occurred in the performance of the duties pursuant to which such opinion was expressed or such certificate was given or such report or statement was made or such statement, account or document was certified-
  - (aa) that such opinion, certificate, report, statement, account or document would be used by his client to induce the third party to act or refrain from acting in some way or to enter into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or
  - (bb) that the third party would rely on such opinion, certificate, report, statement, account or document for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or
- (ii) in any way represented, at any time after such opinion was expressed or such certificate was given or such report or statement was made or such statement, account or document was certified, to the third party that such opinion, certificate, report, statement, account or document was correct, while at such time he knew or could in the particular circumstances reasonably have been expected to know that the third party would rely on such representation for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person.

[Subsec (5) substituted by sec 1(d) of Act 42 of 1982.]

(6) For the purposes of paragraph (b) of subsection (5) the fact that an auditor or a person referred to in that subsection performed the functions of an auditor or accountant shall not in itself be proof that he could reasonably have been expected to know that-

- (a) his client would act as contemplated in subparagraph (i)(aa) of the said paragraph (b); or
- (b) the third party would act as contemplated in subparagraph (i)(bb) or (ii) of the said paragraph (b).

[Subsec (6) added by sec 1(e) of Act 42 of 1982.]

(7) The provisions of paragraph (b) of subsection (5) shall not affect-

- (a) any liability of an auditor or a person referred to in that subsection which arises from-
  - (i) a contract between a third party and such auditor or person; or



- (ii) any statutory provision; or
- (b) any disclaimer of liability by an auditor or person referred to in that subsection.

[Subsec (7) added by sec 1(e) of Act 42 of 1982.]

(8) For the purposes of subsection (5), (6) or (7)-

**"client"** means the person for whom an auditor or a person referred to in subsection (5), or his firm, has performed the duties concerned;

**"third party"** means any person other than the client concerned, and includes any member of a client which is a company or external company (as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973)) or which is any other juristic person.

[Subsec (8) added by sec 1(e) of Act 42 of 1982.]

### **26bis Information to be furnished by accountants and auditors**

(1) Every person who is registered as an accountant and auditor under this Act and is engaged in public practice shall subject to the provisions of subsection (3)-

- (a) notify the board and every person to whom he or his firm acts as auditor of any change in the name, constitution or address of such firm not later than fourteen days after the date on which such change takes place:  
Provided that notice of a change in-

- (i) the name or address of any branch office of a firm; or
- (ii) the constitution of a firm particularly involving a partner assigned to a branch office of such firm,

need be given only to the board and such persons to whom professional services are provided from such branch office; and

[Para (a) substituted by sec 13 of Act 53 of 1975 and by sec 3(b) of Act 91 of 1979 and by sec 3 of Act 48 of 1984.]

- (b) furnish the following information within fourteen days after receiving a request therefor from any person for whom he or his firm acts as auditor or who proposes to appoint him or his firm as auditor:

- (i) every firm name or title under which he practises;
- (ii) the place or places of business of all partnerships in which he is in public practice as a partner;
- (iii) the full names of all his partners; and
- (iv) his nationality, his christian names or the initials thereof, his surname and every surname which he may have borne previously and his ordinary business address and his residential address.

[Subsec (1) amended by sec 9(a) of Act 30 of 1962 and by sec 3(a) of Act 91 of 1979.]

(2) When two or more such persons are practising in partnership the particulars referred to in subsection (1) may be furnished in a communication by or in the name of the firm and any such communication shall be regarded as a sufficient compliance by the individual partners of that firm with the provisions of that subsection.

(3) For the purposes of subsection (1) the expression "every surname which he may have borne previously" does not include-

- (a) in the case of a person adopted as a child, his surname before his adoption; or
- (b) in the case of any person, any surname previously borne by him which was changed or disused before he attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or
- (c) in the case of a married or divorced woman or a widow, the surname borne by her before her marriage.

[Subsec (3) added by sec 9(b) of Act 30 of 1962.]

(4) Every person who is registered as an accountant and auditor under this Act-  
(a) and who is not engaged in public practice shall notify the board forthwith if he commences public practice and of any change in his address;

[Para (a) substituted by sec 3(c) of Act 91 of 1979.]

(b) and who is engaged in public practice, shall notify the board forthwith if he ceases to be engaged in public practice.

[Sec 26bis inserted by sec 3 of Act 64 of 1957 and subsec (4) added by sec 6 of Act 68 of 1965.]

## **27 Disciplinary powers of board**

(1) The board may investigate or cause to be investigated and, if necessary, hear any allegation or charge of improper conduct, whether prescribed or not, of which a person who is or was registered in terms of this Act is alleged to have been guilty while he was so registered, and impose any prescribed punishment in respect of such a charge: Provided that in the case of alleged improper conduct which forms or which the board has reason to believe is likely to form the subject of criminal or civil proceedings in a court of law the board may postpone enquiry until such proceedings have been determined: Provided further that nothing in this section shall be deemed to affect the right of the Institute from taking disciplinary or other action against any of its members in accordance with its constitution and rules.

[Subsec (1) amended by sec 12 of Act 47 of 1956 and by sec 10 of Act 30 of 1962 and by sec 4(a) of Act 48 of 1984.]

(1)*bis* The board may order any person upon whom any punishment is imposed under subsection (1) to pay such reasonable costs as the board may have incurred in connection with the investigation or hearing of the charge in question, or such part thereof as the board may consider just.

[Subsec (1)*bis* inserted by sec 7(a) of Act 68 of 1965 and substituted by sec 4(b) of Act 48 of 1984.]

(2) Whenever-

- (a) any punishment imposed under subsection (1) consists of, or includes, any fine; or
- (b) an order as to costs has been made under subsection (1)*bis*,

[Para (b) substituted by sec 4(c) of Act 48 of 1984.]

the amount of such fine or such costs shall be recoverable by the board from the person concerned and be paid into the funds of the board.

[Subsec (2) substituted by sec 7(b) of Act 68 of 1965.]

(3) Whenever in the course of any proceedings before any court of law it appears to the court that there is *prima facie* proof of improper conduct on the part of a person registered as an accountant and auditor under this Act, or of conduct on the part of such a person which, regard being had to the profession of an accountant or auditor, is improper, the court shall direct that a copy of the record of the proceedings or such part thereof as relates to such conduct, shall be sent to the board.

[Sec 27 amended by sec 8(a) of Act 10 of 1994 and subsec (3) added by sec 14 of Act 53 of 1975.]

## 28 Enquiry by board

(1) For the purpose of any enquiry under section *twenty-seven*, the board may-

(a) summon any person who in its opinion may be able to give material information concerning the subject of the enquiry or who is believed to have in his possession or custody or under his control any book, document or thing which has any bearing on the subject of the enquiry, to appear before it at a time and place specified in the summons, to be interrogated or to produce that book, document or thing, and retain for examination any book, document or thing so produced;

(b) call and, by its chairman or by any other person authorized thereto by it, administer an oath to, or accept an affirmation from, any person present at the enquiry who was or could have been summoned in terms of paragraph (a) and interrogate him and require him to produce any book, document or thing in his possession or custody or under his control;

[Para (b) substituted by sec 15(a) of Act 53 of 1975.]

(c) appoint any person to advise the board at such enquiry on matters pertaining to law, procedure or evidence.

[Para (c) added by sec 8 of Act 68 of 1965.]

(2) A summons for the attendance before the board of any person or for the production of any book, document or thing shall be in the form prescribed by the board with the approval of the Minister, shall be signed by the chairman of the board or a person authorised thereto by it, and shall be served in the same manner as a subpoena in a criminal case issued by a magistrate's court.

(3) If any person who has been duly summoned under this section fails, without sufficient cause, to attend at the time and place specified in the summons, or to remain in attendance until excused from further attendance by the chairman of the board, or if any person called in terms of paragraph (b) of subsection (1) refuses to be sworn or to affirm as a witness or fails without sufficient cause, to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him concerning the subject of the enquiry or to produce any book, document or thing in his possession or custody or under his control which he has been required to produce, he shall be guilty of an offence: Provided that in connection with the interrogation of any such person or the production of any such book, document or thing, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law, shall apply.

(4) Any witness who, having been duly sworn or having made an affirmation, gives a false answer to any question lawfully put to him or makes a false statement on any matter, knowing such answer or statement to be false, shall be guilty of an offence.

(5) Any person who wilfully hinders the chairman or any member or officer of the board in the exercise of any powers conferred upon him by or under this section, shall be guilty of an offence.

(6) A person whose conduct is being enquired into by the board shall be informed of the nature of the complaint made against him and shall be entitled to appear by himself or to be represented by some other person duly authorized in writing on his behalf, and to produce evidence, call and examine witnesses on his behalf and cross-examine other witnesses.

(7) Any person convicted of an offence under this section shall be liable to a fine not exceeding two thousand rand.

[Subsec (7) substituted by sec 15(b) of Act 53 of 1975 and by sec 5 of Act 9 of 1988.]

### **28bis Suspension from practising of registered accountants and auditors who are mentally disabled**

(1) Whenever it appears to the board from information on oath that any person registered as an accountant and auditor under this Act has become mentally disabled to such an extent that it would be contrary to the public welfare to allow him to continue to practise, the board may, if it deems fit, hold an enquiry *mutatis mutandis* in accordance with the provisions of section *twenty-eight* in respect of such person.

(2) If the board finds that such person has so become mentally disabled, it may order the suspension of such person for a specified period from practising as a public accountant.

(3) The board may extend for any period determined by it the period of operation of, or withdraw, any order made under this section.

[Sec 28bis inserted by sec 11 of Act 30 of 1962.]

### **28ter Privileges of board**

No legal proceedings, whether criminal or civil, shall lie against the board or any member or officer thereof in respect of any act or duty performed in accordance with the provisions of section *twenty-six*, *twenty-seven*, *twenty-eight* or *twenty-eight bis*.

[Sec 28ter inserted by sec 11 of Act 30 of 1962.]

## **29 Admission to societies**

(1) Any person who has been registered as an accountant and auditor under this Act, and who-

(a) has complied with the requirements prescribed in paragraph (b) of subsection (2) of section *twenty-three*; or

(b) (i) has passed in the final qualifying examination conducted by the examining board or prescribed by the board or (for a period of two years from the commencement of this Act) in the subjects prescribed by the examining board as at the first day of January, 1950, for its final examination, section B; and

(ii) has satisfied the board that he has had not less than six years' practical experience of a sufficiently varied and satisfactory nature, and obtained either in the office of a public practising

accountant or in accountancy practice carried on by the applicant on his own behalf,

[Subpara (ii) amended by sec 13 of Act 47 of 1956.]

shall subject to compliance with such other requirements as may be prescribed by the Institute for admission thereto, be entitled upon application to be admitted to membership of the Institute.

(2) .....

[Subsec (2) deleted by Act 10 of 1994.]

(3) No person shall for the purpose of this section be deemed to have complied with the requirements prescribed in paragraph (b) of subsection (2) of section *twenty-three* by reason only of the fact that he has been registered as an accountant and auditor in pursuance of the provisions of subsection (3) of that section.

### **30 Offences and penalties**

(1) No person who is registered as an accountant and auditor under this Act, shall-

(a) except with the consent of the board knowingly employ in connection with his practice-

(i) any person while such person is suspended from public practice under any provision of this Act; or

(ii) any person not registered as an accountant and auditor under this Act who was previously so registered; or

(iii) any person not registered as an accountant and auditor under this Act whom the board has refused to register by virtue of the provisions of subsection (6) of section *twenty-three*;

[Para (a) substituted by sec 12 of Act 30 of 1962.]

(b) make over to or share with any person (other than a person registered as an accountant and auditor under this Act or practising as an accountant and auditor outside Namibia) any portion of professional fees earned by him in respect of work performed by him as an accountant and auditor;

[Para (b) substituted by sec 16(a) of Act 53 of 1975.]

(c) share profits derived from his practice as an accountant or auditor in Namibia or practise in Namibia in partnership, with any person not registered as an accountant and auditor in terms of this Act;

[Para (c) amended by sec 14 of Act 47 of 1956.]

(d) practise under a firm name or title unless on every letterhead bearing such firm name or title there appears-

(i) his present christian names, or initials, and surname; or

(ii) in the case of a partnership-

(aa) at least the present christian names, or initials, and surnames of the managing partners or, if there are no managing partners, of the active partners, or where such a letterhead is only used by a branch office of the partnership, at least the present christian names, or initials, and surnames of the managing partners at that

branch office or, if there are no such managing partners, of the resident partners at that branch office or, if there are no such resident partners, of the partners assigned to that branch office; and

- (bb) if any partner referred to in subparagraph (aa) is not ordinarily resident in Namibia, a statement of that fact and the name of the country in which such partner is ordinarily resident;

[Para (d) substituted by sec 4(a) of Act 64 of 1957, amended by sec 16(b) of Act 53 of 1975 and substituted by sec 6(a) of Act 9 of 1988.]

- (e) sign any account, statement, report or other document which purports to represent work performed by him, unless such work was performed by himself or under his personal supervision or direction or by or under the personal supervision or directions of one or more of his partners: Provided that the provisions of this paragraph shall not apply in respect of work performed on behalf of a person registered as an accountant and auditor under this Act by another accountant and auditor so registered or in respect of work performed outside Namibia by a member of an organized body of professional accountants outside Namibia whose status, in the opinion of the board is at least equal to that demanded by the board for the profession in Namibia: Provided further that nothing in this paragraph shall be deemed to prevent any person registered as an accountant and auditor under this Act from signing the firm name or title under which he practises;
- (f) perform professional work in connection with any matter which is the subject of dispute or litigation on condition that payment for such work shall be made only if such dispute or litigation ends favourably for the party for whom such work is performed;
- (g) engage in public practice during any period in respect of which he has been suspended from practice;
- (h) engage in public practice without carrying such professional indemnity insurance as may have been prescribed by the board.

[Para (h) added by sec 16(c) of Act 53 of 1975.]

(2) .....

[Subsec (2) deleted by sec 4(b) of Act 64 of 1957.]

(3) .....

[Subsec (3) deleted by sec 4(b) of Act 64 of 1957.]

(4) Any person who contravenes or fails to comply with any provision of this Act, shall be guilty of an offence and, where no other penalty is prescribed, liable on conviction to a fine not exceeding four thousand rand.

[Subsec (4) substituted by sec 16(d) of Act 53 of 1975 and by sec 6(b) of Act 9 of 1988.]

### **31 and 32 .....**

[Secs 31 and 32 repealed by sec 13(1) of Act 66 of 1968.]

### **33 Application to South-West Africa**

This Act shall apply also to the territory of South-West Africa.

### **34 Short title and commencement**

This Act shall be called the Public Accountants' and Auditors' Act, 1951, and shall come into operation upon a date to be fixed by the Governor-General by proclamation in the *Gazette*.

© 2005 Juta and Company, Ltd.