

FINANCIAL REPORTING ACT, 2010

No. 11



of 2010

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

Date of Assent: 03/09/10

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

1. This Act may be cited as the Financial Reporting Act, 2010 and shall come into operation on such date as the Minister may, by Order, appoint.

2. In this Act, unless the context otherwise requires —
 “annual report” means the document that an entity issues on an annual basis of its affairs, including its financial statements together with the audit report, and the report from its Board of Directors;
 “annual revenue” means revenue accruing over the preceding 12 months;
 “audit” means an examination of the financial statements of an organisation to form an opinion on whether the —

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

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

“audit firm” means a firm that provides audit services to a private or public entity;

“auditing standards” means the auditing standards issued by the Authority under section 53;

“Authority” means the Botswana Accountancy Oversight Authority established under section 3;

“Board” means the Board of Directors established under section 7;

“certified auditor” means an auditor registered under the Accountants Act;

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

“certified auditor of P.I.E” means the certified auditor of public interest entity;

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

“financial reporting standards” means the financial reporting standards issued by the Authority under section 52;

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

“firm” means an audit firm for certified auditors of public interest entities registered under section 25, which firm provides audit services to public interest entities;

“independence” means independence of mind, independence in appearance, or both;

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

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

“Institute” means the professional accountancy body known as the Botswana Institute of Chartered Accountants established under section 3 of the Accountants Act;

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

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

“professional misconduct”, with the necessary modifications, has the same meaning assigned to the acts or omissions constituting misconduct specified under the Schedule to the Accountants Act;

“public interest entity” has the meaning assigned to it under section 22; and

“rules” means the rules of the Authority made under section 72.

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PART II – Establishment and functions of the Botswana Accountancy Oversight Authority and its Board

3. (1) There is hereby established a body to be known as the Botswana Accountancy Oversight Authority.

Establishment
of Authority

(2) The Authority shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of doing or performing all such acts as bodies corporate may, by law, do or perform.

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

Seal of
Authority

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

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

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

Objectives
of
Authority

- (a) promote the highest standards of auditors, whether or not registered with the Authority;
- (b) improve the standard and quality of accounting and audit services;
- (c) improve the integrity, competence and transparency of accountants and auditors;
- (d) promote development of the accountancy profession;
- (e) protect the interest of the general public and investors in entities, including public interest entities;
- (f) ensure compliance with and application of local and international accounting and auditing standards;
- (g) promote high standards of corporate governance and compliance with professional ethics;

- (h) monitor and adopt international developments in accounting and auditing fields; and
- (i) encourage effective collaboration with other regulators.

6. (1) Subject to the provisions of this Act, the functions of the Authority, for purposes of providing oversight over auditors, professional accountancy bodies and generally with regard to the accounting and auditing profession, shall be to —

- (a) issue, adopt, establish, monitor and enforce financial reporting, accounting and auditing standards;
- (b) monitor the quality and fairness of financial reporting;
- (c) monitor and enforce compliance with the reporting requirements provided under any relevant enactment;
- (d) ensure and enforce compliance with standards and pronouncements issued by the —
 - (i) International Accounting Standards Board,
 - (ii) International Auditing and Assurance Standards Board,
 - (iii) International Public Sector Accounting Standards Board,
 - (iv) International Ethics Standards Board for Accountants of the International Federation of Accountants,
 - (v) International Accounting Education Standards Board, and
 - (vi) the successor bodies of each;
- (e) oversee and monitor the services and professional conduct of certified auditors of P.I.Es;
- (f) issue accounting and auditing rules, codes and guidelines in accordance with the relevant laws and international standards;
- (g) conduct investigations and where necessary, impose relevant sanctions on certified auditors and officers of public interest entities as well as the public interest entities;
- (h) establish, maintain and apply an investigation system and disciplinary procedure against certified auditors and firms of public interest entities as well as the public interest entities and where necessary coordinate with or refer any disciplinary proceedings to the Institute;
- (i) coordinate and cooperate with international institutions in the development and enforcement of financial reporting, accounting and auditing standards;
- (j) oversee and monitor the regulatory system, training, professional development programmes and examinations and other activities of the Institute;
- (k) initiate, organise and participate in educational and training programmes in accounting and auditing;
- (l) encourage, and where appropriate, finance research into any matter affecting financial reporting, accounting, auditing and corporate governance;
- (m) provide accreditation to the Institute and any trainer that meets the required standards;
- (n) register public interest entities; and

- (o) perform such other duties or functions as the Authority deems necessary for the purposes of implementing the provisions of this Act.
- (2) In the performance of its functions, the Authority shall —
 - (a) review and analyse financial reports and identify any failure on the part of the public interest entity to comply with the requirements of any relevant law or any financial reporting standard, code or guideline issued under this Act;
 - (b) inform the public interest entity of its shortcomings in its financial report and the required action to rectify the shortcomings; and
 - (c) conduct inspection, at least every three years, on the regulatory system and other activities of the Institute and investigate whether they meet the Institute’s criteria for protecting the public by —
 - (i) maintaining high professional standards,
 - (ii) taking steps to support the development of the accountancy profession, and
 - (iii) accomplishing other public interest objectives as set forth in their constitutions; and
 - (d) inform the public interest entity, auditor, firm, the Institute or any other interested party of its, his or her right to make representations to the Authority in relation to any matter under consideration by the Authority.

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

Board of
Directors

- (a) the Accountant General;
- (b) the Governor of the Bank of Botswana;
- (c) the Commissioner General of the Botswana Unified Revenue Service;
- (d) the Chief Executive Officer of the Non Bank Financial Institutions Regulatory Authority;
- (e) the Chief Executive of the Botswana Chamber of Commerce, Industry and Manpower; and
- (f) the Chief Executive of the Botswana Stock Exchange; who shall be ex officio members;
- (g) two experienced professional accountants, in this Act referred to as experts, appointed by the Minister on the recommendation of the ex officio members, in consultation with the Institute or its successor; and
- (h) one academic professional accountant, appointed by the Minister on the recommendation of the ex officio members in consultation with the Institute or its successor, and the Institutes of higher learning in Botswana.
- (2) The appointed members of the Board shall be selected from persons —
 - (a) with at least 10 years experience in management, a profession or academia, and shall meet such other criteria as may be prescribed by this Act and provided in the rules; and
 - (b) who demonstrate expertise and practical knowledge of internationally recognised financial reporting and auditing standards.

Powers of the Board

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

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

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

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

- (a) cooperate with, or make the Authority become a member or an affiliate of, any international body, the objects or functions of which are similar to or connected with those of the Authority;
- (b) impose and collect such penalties, fees and fines as may be required under this Act and the rules;
- (c) levy such charges or fees as may be reasonable for services and facilities provided by the Authority;
- (d) issue rules, guidelines and standards relating to financial reporting, accounting and auditing; and
- (e) conduct any inquiry or investigation or collect information, documents or evidence for the purpose of carrying out its functions.

Tenure of office

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

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

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

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

Disqualification, removal and resignation

10. (1) A person shall not be appointed or elected as a member of the Board or be qualified to continue to hold office as a member who —

- (a) is not a citizen of Botswana;
- (b) has in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been discharged, or
 - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;
- (c) has within a period of 10 years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon; or

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

(2) A person on being appointed a member of the Board, shall not engage in providing audit or assurance services, either in his or her name, or in the name of any other person.

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

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

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

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

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

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

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

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

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

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

(b) is prejudicial to the efficient conduct of the Board; or

(c) tends to bring the Board into disrepute.

11. A member shall vacate his or her office and his or her office shall become vacant —

(a) if he or she becomes disqualified, in terms of section 10, to hold office as a member;

(b) if he or she is adjudged bankrupt or insolvent;

(c) if he or she is absent from three consecutive meetings of the Board without reasonable cause;

(d) upon his or her death;

(e) if he or she becomes mentally or physically incapable of performing his or her duties as a member of the Board;

(f) upon the expiry of one month’s notice in writing to the Minister of his or her intention to resign from office;

Vacancy of
office
of member
of Board

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- (g) if he or she is dismissed by the Minister on the grounds of contravening the provisions of this Act or for misconduct in accordance with section 10 (4) (c); or
- (h) immediately after a ruling against the member is made on all appeals made in respect of a conviction of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.
- 12.** (1) Where the office of an expert or academic member becomes vacant before the expiry of the member's term of office, the Minister, on the recommendation of the ex officio members, shall appoint another person to be a member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.
- (2) Subsection (1) shall not apply where the remainder of the period for which the member of the Board whose office has been vacated would otherwise have held office is less than six months.
- 13.** A member shall be paid out of the funds of the Authority, such remuneration and allowance, if any, as the Board, with the approval of the Minister may from time to time determine.

Filling of
vacancy

Remuneration
and allowance

PART III – *Meetings and proceedings of the Board*

Election of
Vice
Chairperson

- 14.** (1) At the first meeting of the Board, the members shall elect, from among their number, a Vice Chairperson who shall hold office for two years, unless he or she ceases to be a member of the Board, and shall be eligible for re-election for one further term.
- (2) On the expiry of the term of office of the Vice Chairperson or where such person vacates his or her office, a new Vice Chairperson shall be elected by the members from among their number at the next meeting of the Board or as soon thereafter as may be convenient.
- (3) The Chairperson or Vice Chairperson may vacate his or her office even though he or she remains a member of the Board.
- (4) The Vice Chairperson shall, whenever the Chairperson is absent or unable to carry out his or her functions, exercise the functions of the Chairperson during his or her absence, or when he or she is unable to act as Chairperson.

Meetings
of Board

- 15.** (1) Subject to the provisions of this Act, the Board shall regulate its own proceedings.
- (2) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet at least once in every three months, at such times and places as the Chairperson shall determine.
- (3) Upon giving notice in writing of not less than 14 days, a meeting of the Board may be called by the Chairperson, provided that if the urgency of any particular matter does not permit the giving of notice, a special meeting may be called upon giving a shorter notice.

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

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

(a) the Chairperson; or

(b) in the absence of the Chairperson, the Vice Chairperson.

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

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

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

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

Committees
of Board

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

(a) standards setting committee;

(b) financial reporting monitoring committee;

(c) audit practice review committee;

(d) enforcement committee; and

(e) education and training committee.

(3) The Board may appoint, to committees established under subsection (1), such number of members of the Board and other persons with specialised skills, not being members of the Board, as it considers appropriate, and the members of the committee shall hold office for a period that the Board may determine.

(4) Members of a committee who are not members of the Board may take part in the proceedings of the committee, but shall not have the right to vote.

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

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

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

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

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Disclosure
of interest

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

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

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

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

Confidentiality

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

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

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

Reports to
Minister

19. (1) The Chairperson shall from time to time submit, to the Minister, reports with regard to matters relating to the activities of the Authority which, in the opinion of the Board, should be brought to the notice of the Minister.

(2) The Board shall, when so requested by the Minister, furnish him or her with advice on matters connected with the accounting and auditing profession or cognate matters, and shall communicate to the Minister, any information acquired in the course of its duties relating to matters regarded as being of public importance.

PART IV – *Chief Executive and other Staff of the Authority*

Chief
Executive

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

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

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

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

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

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

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

21. (1) The Board shall, on the recommendation of the Chief Executive, appoint the senior staff of the Authority.

Appointment
of staff of
Authority

(2) The contracts of the senior staff of the Authority shall not exceed a term of five years, and may be renewed at the discretion of the Board.

(3) The senior staff shall, under the direction of the Chief Executive, assist the Chief Executive in the proper administration and management of the functions and affairs of the Authority, in accordance with the policies laid down by the Board.

(4) The Chief Executive shall appoint such other staff as may be necessary for the proper discharge of the functions of the Authority.

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

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

PART V – Registration of certified auditors of Public Interest Entities and firms

22. For purposes of this Act “public interest entity” means —

Public
Interest Entity

- (a) any entity that has issued equity or debt securities for public subscription, and which is listed in a stock exchange;
- (b) any bank, deposit taking institution, or other similar institution that is subject to supervision by the Bank of Botswana;
- (c) any insurance company, pension and provident fund, collective investment undertaking, and any other similar institution that is subject to supervision by the Non-Bank Financial Institutions Regulatory Authority; or
- (d) any entity to which any two of the following conditions are applicable in excess of an amount or number the Minister may prescribe in the Regulations —
 - (i) annual revenue,
 - (ii) number of employees,
 - (iii) the total assets, or

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- (iv) total liability, not including shareholder's equity, applicable at the end of the preceding accounting year.
- Register **23.** Subject to the provisions of this Act, the Board shall cause to be kept, maintained and updated, registers in the following manner —
- (a) Register of Certified Auditors of Public Interest Entities, specifying the name and all relevant particulars of the certified auditor of P.I.E;
 - (b) Register of Firms for Certified Auditors of Public Interest Entities, specifying the name and all relevant particulars of the audit firm; and
 - (c) any other Register for any matter the Authority deems necessary, specifying the relevant information regarding the matter.
- Registration of a certified auditor of public interest entity Cap. 42:01 **24.** (1) Notwithstanding anything contained in the Companies Act, or any other law, a person shall not hold any appointment, or offer any services for remuneration, as a certified auditor of a P.I.E, unless he or she is registered by the Authority as a certified auditor of P.I.E under this Act.
- (2) An application to practise as a certified auditor of a P.I.E may be made by any person holding a practising certificate issued by the Institute, in such form as may be prescribed.
- (3) An application made under subsection (2) shall be accompanied by such fees and information as may be determined by the Authority in its rules.
- (4) Where, after consideration of an application, the Authority is satisfied that the applicant —
- (a) holds a practising certificate issued by the Institute;
 - (b) is a fit and proper person in accordance with the rules;
 - (c) is a member or employee of a firm and has provided evidence that the firm's quality assurance procedures are appropriate; and
 - (d) meets such other requirements as may be specified in the rules and codes of the Authority,
- the Authority shall register the applicant as a certified auditor of P.I.E.
- (5) The Authority shall enter the name of the certified auditor of P.I.E in the Register of Certified Auditors of Public Interest Entities.
- (6) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P5 000 for each day the offence continues to occur or to imprisonment for a period not exceeding five years, or to both.
- Registration of audit firm for public interest entity **25.** (1) An audit firm shall not practise or provide audit services to a public interest entity, unless such firm is registered with the Authority.
- (2) A person shall not practise as a certified auditor of P.I.E in a partnership with other persons or in a registered firm, unless such person has been registered as a certified auditor of P.I.E.
- (3) An application under this section shall be in such form and manner as shall be prescribed by the Authority, and shall be accompanied by such fees and information as may be determined by the Authority in its rules.
- (4) The Authority shall register the firm and enter its name and such particulars as it considers relevant upon being satisfied that —
- (a) all the partners of the firm who are in the accounting and auditing field, are registered with the Institute;

- (b) all the partners of the firm who are in the accounting and auditing field, are registered as certified auditors of public interest entities and there is a written undertaking by the applicant firm and such partners, that they shall be bound by the disciplinary provisions of the rules individually;
- (c) the applicant firm holds a professional indemnity insurance of such amount as the Authority may determine in its rules, or provides such other financial guarantee as the Authority may from time to time determine; and
- (d) the quality of audits of a firm, including the quality assurance procedures in place in the firm's audit and assurance practice, comply with the standards set by the Authority.

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

Certificate of registration

- (a) a person registered as a certified auditor of P.I.E in accordance with section 24; and
- (b) an audit firm which has been registered as a firm for certified auditors of public interest entities in accordance with section 25.

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

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

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

Renewal of registration

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

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

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

28. The Authority may refuse to register —

- (a) a person as a certified auditor of P.I.E where such person does not satisfy the requirements specified in section 24 (4); and
- (b) an audit firm as a firm for certified auditors of public interest entities where such firm does not satisfy the requirements specified in section 25 (4).

Refusal to register a person or firm

29. (1) Where the Authority refuses to register an applicant under sections 24 and 25, it shall, by notice in writing, inform the applicant of its decision as soon as practicable, but not later than 14 days after such decision.

Appeal against refusal to register

(2) An applicant who wishes to appeal the Authority’s refusal to register him or her, or the firm shall, within 14 days of receiving notification of the refusal, submit an appeal, in writing, to the Appeals Committee, specifying the grounds for the appeal, including any facts or legal analyses that may contradict or mitigate the refusal to register.

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

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

Change of name

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

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

Cancellation or suspension of registration

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

- (a) has obtained registration by fraud or misrepresentation;
- (b) no longer satisfies or has acted in breach of the auditing standards adopted by the Authority or any rules or regulations of the Authority;
- (c) has been suspended or cancelled as a member under the Institute;
- (d) no longer satisfies the requirements of sections 24 and 25;
- (e) has acted in breach of the provisions of this Act; or
- (f) has been convicted of an offence, whether in Botswana or another jurisdiction —
 - (i) for which he or she could have been sentenced to imprisonment without the option of a fine, or
 - (ii) involving dishonesty.

Restoration of name to register

32. Where the certified auditor of P.I.E or firm has been removed from the register or the registration has been suspended, the Authority may either of its own volition, or on the application of the certified auditor of P.I.E or firm concerned, made in such form as may be prescribed, and after holding such inquiry as the Authority may consider necessary, direct that the name of the certified auditor of P.I.E or firm be restored to the register.

Register to be prima facie evidence

33. (1) A register specified in this Act shall be prima facie evidence of the matters set out therein.

(2) Notwithstanding the generality of subsection (1), a certificate purporting to be under the Seal of the Authority to the effect that —

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

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

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

34. A person who —

- (a) makes or causes to be made an unauthorised entry, alteration or deletion in the register;
- (b) procures or attempts to procure for himself or herself or another person, registration, or a certificate of registration by means of fraud, false pretence or concealment of a material fact;
- (c) makes or causes to be made in connection with an application for registration, a false declaration in a document used for the purpose of establishing his or her identity;
- (d) wilfully destroys or renders illegible an entry in the register;
- (e) without the permission of the holder, wilfully destroys or renders illegible a certificate of registration; or
- (f) forges or utters, knowing the same to be forged, a document purporting to be a certificate of registration,

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

Offences in
connection
with
registration

PART VI – *Disciplinary and other Inquiries*

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

- (a) is suspected of professional misconduct;
- (b) has contravened or is in breach of the provisions of this Act or of the rules; and
- (c) is unfit to practise as referred to in section 39.

(2) The Board shall cause to be sent to a certified auditor of P.I.E against whom an allegation has been made under subsection (1), a registered letter to his or her address as shown in the register, containing a notice setting out the allegation against him or her and the Board shall afford the certified auditor of P.I.E an opportunity to be heard either by himself or herself or by a legal representative.

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

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

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

Inquiry by
Board

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

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

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

Disregard of
summons,
etc.

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

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

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

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

Powers of
Board at
inquiry

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

- (a) reprimand or caution him or her;
- (b) order that his or her name be removed from the register;
- (c) order his or her suspension, for a specified period, from performing the work of a certified auditor of P.I.E;
- (d) impose such conditions as it considers appropriate; or
- (e) order him or her to pay such fine as the Board may determine.

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

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

Disciplinary
powers of
Board

38. The Board may institute an inquiry, under this Part, into the conduct of a certified auditor of P.I.E where —

- (a) the certified auditor of P.I.E has been convicted of an offence within or outside Botswana, whether before or after the date of registration; and
- (b) the Board is of the opinion that the offence under paragraph (a) constitutes professional misconduct.

Unfit to
practise

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

- (a) call for information regarding the allegation;
- (b) cause such investigation to be made as it thinks necessary; and
- (c) seek such legal advice or other assistance as it may require.

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

40. (1) The Minister shall, by Order, appoint an Appeals Committee which shall hear and determine appeals made from the decisions of the Board, Authority or any of its committees.

Appeals
Committee

(2) The Appeals Committee shall, in consultation with the Authority, determine its own procedure for the hearing of appeals made in terms of subsection (1).

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

Appeals

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

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

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

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

- (a) confirm, vary or set aside any decision of the Minister; or
- (b) remit the matter to the Minister for further consideration and may make such other orders as to costs as it considers appropriate.

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

Publication of
outcome of
proceedings

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

PART VII – Standards of Practice of Certified Auditors of Public Interest Entities

- 43.** (1) A certified auditor of a P.I.E shall not —
- (a) employ a person whose registration by the Authority has been suspended or who has been suspended from practising as a certified auditor of P.I.E to carry out work in connection with his or her audit practice;
 - (b) practise under the name of a firm, unless the Authority has been notified of the following —

Unauthorised
audit practice

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- (i) in the case of a partnership, of the last names and initials of the partners of the firm, or
 - (ii) where the name of the firm is similar to, or includes the name of a regional or international network, or where the name of the firm mentions that it is part of a network in its letterhead or any other document, the nature of such association or relationship with the regional or international network; and
- (c) sign any account, statement, report or other document which purports to represent work performed by a certified auditor of P.I.E, unless he or she is satisfied and is prepared to take full responsibility for the work done.
- (2) A person who fails to comply with subsection (1) shall be liable to a fine not exceeding P500 000.
- 44.** (1) Where an auditor reports on the financial statements of a public interest entity that he or she has audited the accounts, the auditor shall express a clear written opinion in accordance with the requirements of the applicable auditing standards, this Act and other relevant enactments.
- (2) A certified auditor of P.I.E shall, in his or her report, express an opinion unless the auditor has compiled the report using the auditing standards issued by the Authority pursuant to section 53.
- (3) Where the annual report of a public interest entity discloses the extent of compliance with any regulatory requirements to which the entity or its officers and directors are subject, the auditor shall report whether the disclosure is consistent with such other regulatory requirements.
- 45.** (1) Where, during the course of an audit of a public interest entity, a certified auditor of P.I.E is satisfied, or has reason to believe, that a material irregularity has taken, or is taking place, such auditor shall, without delay —
- (a) notify, in writing, the officers and all the members of the board of the public interest entity of the irregularity, by giving particulars of the irregularity; and
 - (b) request every person referred to in paragraph (a), either individually or collectively, to —
 - (i) acknowledge receipt, in writing, of the notice, and
 - (ii) take such actions as he or she may deem necessary.
- (2) The certified auditor of P.I.E shall, within 30 days of the issuance of the notice referred to in subsection (1) (a), notify the Authority, and any other relevant regulatory body as may be prescribed by the rules, of the material irregularity referred to in subsection (1), together with such other information as he or she deems fit, unless the auditor is satisfied that the officers or the members of the board of the public interest entity referred to in subsection (1), have taken adequate steps to remedy the irregularity.
- 46.** (1) A certified auditor of P.I.E shall independently carry out his or her functions and shall not —
- (a) act in any manner contrary to any code of professional conduct and ethics adopted by the Authority or the Institute to govern the accountancy profession; or

Auditor's
report
and opinion

Material
irregularity

Independence
of
auditor

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

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

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

Conflict of interest

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

Sanctions of certified auditor of public interest entity

- (a) issue a warning to the certified auditor of P.I.E;
- (b) require the certified auditor of P.I.E to adopt prescribed steps;
- (c) require the certified auditor of P.I.E to undergo training to improve his or her capacity to provide high quality audit services; or
- (d) impose a fine not exceeding P100 000.

PART VIII – *Accreditation and Oversight of the Botswana Institute of Chartered Accountants*

49. (1) For purposes of this section “public interest obligation” means the responsibility that the Institute and its members have to discharge its functions in the interest not only of its principals but also in the interest of the community as a whole, as may be determined by the Authority from time to time in its rules.

Public interest oversight of Institute

(2) The Authority shall ensure that the Institute —

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

(3) The Institute shall furnish the Authority, within six months of the end of its financial year —

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

(4) If the Authority finds that the Institute is not meeting, or has not met its public interest obligations to —

- (a) maintain high professional standards;
- (b) develop the accounting profession; or
- (c) accomplish the other public interest objectives set forth in its constitution, the Authority may,

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upon 30 days written notice to the Institute, assume the functions of the Institute until it is satisfied that the Institute has instituted practices and procedures that will enable it to successfully discharge its responsibilities.

(5) The Authority may, with the approval of the Minister, recover from the Institute all or part of the expenses necessarily incurred in connection with assumption of the functions of the Institute under this section.

Accreditation
of
Institute and
branches of the
accountancy
profession

50. (1) The Authority shall accredit the Institute as a professional accountancy body, upon application attached by evidence that the Institute is a member of the International Federation of Accountants and is in compliance with its membership obligations.

(2) The Institute shall not establish a branch of the accountancy profession unless it has obtained accreditation from the Authority for the particular purpose.

(3) To qualify for accreditation, the Institute or a branch of the accountancy profession shall demonstrate to the satisfaction of the Authority that —

- (a) the Council of the Institute has passed a resolution to establish the branch, before the application for accreditation of the branch by the Authority;
- (b) it complies with the requirements for professional development and achievement of professional competence in line with international best practice;
- (c) it has appropriate mechanisms for ensuring that its members participate in continuing professional development in line with international best practice;
- (d) it has mechanisms to ensure that its members are disciplined where appropriate;
- (e) it keeps a register or registers of its members in the form prescribed by the Board of the Authority, or by the Council of the Institute; and
- (f) it meets any other requirements as stipulated by the Authority in line with international best practice.

(4) To retain its accreditation, the Institute or a branch of the accountancy profession shall, at least once a year, at a time to be prescribed by the Authority, satisfy the Authority that it continues to comply with the requirements for accreditation as provided in subsection (3).

Cancellation of
accreditation

51. (1) The Authority may, where it has decided to cancel the accreditation of a branch of the accountancy profession —

- (a) give written notice to the Institute and branch, of its intention to cancel the accreditation of the concerned branch of the accountancy profession stating the reasons for such cancellation; and
- (b) afford the Institute and branch a period of not less than 21 days and not more than 30 days in which to submit grounds for its accreditation not to be cancelled.

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

(3) The accreditation of a branch of accountancy profession shall lapse automatically if it —

- (a) ceases to exist; or
- (b) fails to pay any prescribed fee or portion thereof within the period prescribed by the Authority.

PART IX – Setting of Standards and Monitoring

52. (1) The Authority shall —

- (a) adopt, issue, and keep up-to-date financial reporting standards for public interest entities, and ensure that they are consistent with the International Financial Reporting Standards and interpretations issued by the International Accounting Standards Board; and
- (b) issue appropriate interpretations and implementation guidelines to facilitate common adoption of standards by public interest entities.

Financial
reporting
standards

(2) The Authority shall specify in the financial reporting standards the minimum requirements for recognition, measurement, presentation and disclosure in annual financial statements, consolidated financial statements or other financial reports that every public interest entity shall comply with in the preparation of financial statements and reports.

(3) The Authority shall adopt, issue and keep up-to-date a separate simplified financial reporting framework and standards for small and medium enterprises in conformity with international best practice.

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

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

- (a) qualified agencies of other governments, including their regulatory agencies;
- (b) regional and subregional accountancy bodies; or
- (c) international accountancy bodies, and other international institutions, in the development of financial reporting, accounting and auditing standards to assist it in performing the functions described in subsections (1), (2) and (3).

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

Auditing
standards

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

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

(4) Every certified auditor for P.I.E shall, in the exercise of his or her profession, comply with —

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

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

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

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

(a) qualified agencies of other governments, including their accountancy regulatory agencies; or

(b) regional and subregional accountancy bodies and other international accountancy bodies,

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

Publication standards

54. (1) Where the Authority intends to publish or amend any financial reporting standard or any auditing standard, it shall cause a notice to be published in —

(a) the Authority's website; and

(b) not less than two leading daily newspapers of national circulation, for three consecutive days, and shall invite comments from all interested persons.

(2) A person who wishes to submit a comment shall, within 60 days of the last date of the publication specified in subsection (1), submit his or her comments in writing to the Authority.

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

Compliance by public interest entities and others

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

(a) financial reporting requirements of any other relevant enactment;

(b) financial reporting standards issued by the Authority under section 52;

(c) rules made under this Act; and

(d) codes, rules or regulations of the Authority with the ultimate objective of protecting the interest of the general public and investors.

Monitoring of financial statements and reports

56. (1) Where a public interest entity or other entity is required under any enactment to file its financial statements and reports with a Government department or authority, the Authority or any officer of the Authority may review the financial statements and reports of a public interest entity filed with the Government department or authority, to determine whether the financial statements and reports are in compliance with this Act;

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

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

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

- (a) any officer or director of a public interest entity;
- (b) any employee of a public interest entity responsible for preparing the financial statements and reports; and
- (c) any auditor or audit firm responsible for the audit of the financial statements of that public interest entity.

(5) Where a public interest entity or other entity files any annual financial statement or report with any Government department or authority, the entity shall also file a copy of the financial statement and report with the Authority, in such manner as may be required in the rules.

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

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

- (a) for each failure of a public interest entity or other entity to file a copy of its financial statements and reports with the Authority;
- (b) for each failure of a public interest entity to file with the Authority financial statements and reports that have been audited by a certified auditor of P.I.E or firm;
- (c) on every officer who is responsible for the failure of a public interest entity or other entity to file a copy of its financial statements and reports for every day during which the default continues;
- (d) on every officer who is responsible for the failure of a public interest entity to file financial statements and reports that have been audited by a certified auditor of P.I.E or firm; or
- (e) for each wilful refusal of a public interest entity or other entity, its officers, employees or auditors, to provide further information or clarification in response to request pursuant to subsection (4).

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

(9) The Minister may, by notice published in the *Gazette*, exempt any public interest entity from the provisions of this section.

57. (1) The Authority, or any officer, other accountancy regulatory agencies in other countries, regional and subregional accountancy bodies and other international accountancy bodies authorised by the Authority in writing, may review the practice of a certified auditor of P.I.E and, for that purpose, is authorised to —

Practice
review of
auditors

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- (a) inspect any relevant book, audit working papers and files, document and record in the possession, or under the control of the certified auditor of P.I.E, his or her partner, employee or associated persons and make copies of or take any abstract of or extract from any such book, document and record; and
- (b) seek information or clarification from any partner, employee or associated person of the certified auditor of P.I.E.

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

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

Power of
investigation

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

- (a) any complaint of dishonest practice, negligence, professional misconduct, or malpractice made against a certified auditor of P.I.E or firm;
- (b) any breach of the Code of Professional Conduct and Ethics by a certified auditor of P.I.E;

- (c) any material irregularity notified to it pursuant to section 44; or
- (d) any failure to provide reports or documents required by section 56.

(2) Where the Authority investigates a complaint —

- (a) it shall notify the auditor whose conduct, act or omission is under investigation, of the nature of the complaint;
- (b) it may summon and hear the auditor, his or her partner, employee or associated persons;
- (c) it may summon and hear witnesses;
- (d) it may call for relevant documents and make such copies thereof as it thinks fit; and
- (e) it may review any financial statement and report filed with any Government department or authority.

(3) Every public interest entity, its officers or auditor, the partner or employee of the auditor or associated persons to such auditor shall, subject to the provisions of subsections (4) and (5), produce any relevant book, audit working papers or files, record or document in his or her possession or under his or her control to the Authority where the Authority is conducting an investigation for the purposes of subsection (1).

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

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

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

- (a) any information which is confidential under the Companies Act or any other law for the time being in force; and
- (b) privileged communication by or to a legal practitioner in that capacity, except in so far as the disclosure of the information is made according to the law.

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

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

Sanctions of public interest and other entities, and their officers

(2) Where a notice is served on a public interest or other entity under subsection (1), it shall, within 30 days of the service of the notice, restate its financial statements or reports and resubmit them to the Authority and to the Government department or authority.

(3) Any public interest or other entity which fails to comply with the notice referred to in subsection (2) shall be liable to a fine not exceeding P50 000 imposed by the Authority, or the Authority may refer the matter to the relevant Government department or authority for appropriate action.

(4) In the event that the Authority finds that an officer wilfully failed to comply with either subsection (1) or (2) or was responsible for a serious distortion of the public interest entity or other entity's financial statements or reports, the Authority may —

- (a) impose a fine not exceeding P20 000 on that responsible officer;
- (b) suspend or disqualify that responsible officer from serving in that capacity for that or any other public interest entity; and

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(c) refer the matter to any other relevant Government department or agency for appropriate action.

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

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

PART X – *Financial and accountability provisions*

Revenues of
Authority

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

(2) The Authority shall use the funds acquired under subsection (1) to meet the costs incurred in its operations and shall use any surplus accrued for such purpose as it may determine, with the approval of the Minister.

Annual
estimates

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

(a) a budget in respect of the next ensuing financial year that sets forth the Authority's estimated receipts and expenditures and the sums which are likely to be required by it from the Government during the next ensuing financial year and forward;
(b) a business plan and its strategy and activity programme; and
(c) a certification by the Chief Executive and any other senior officer in charge of accounting and finance functions of the Authority, that the budget represents a fair and reasonable projection of the income and expenditure of the Authority,

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

Financial year

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

Imposition of
fines

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

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

Charges

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

- (a) the annual registration of public interest entities;
- (b) the submission of financial statements and reports to it;
- (c) registering certified auditors of public interest entities;
- (d) registering firms for certified auditors of public interest entities;
- (e) performing inspections and reviewing audits;
- (f) accreditation of a branch of accountancy profession;
- (g) filing appeals to the full Board; and
- (h) any other services provided by the Authority.

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

Accounts and audit

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

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

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

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

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

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

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

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

Financial and annual report

- (a) balance sheets and other financial statements for the year, including statements of accounts specified in section 65, as required by applicable accounting standards;

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- (b) notes to the financial statements, as required by applicable accounting standards; and
 - (c) an annual report.
- (2) The financial report shall include all information necessary to give a true and fair view of the financial position and performance of the Authority.
- (3) The annual report for a financial year shall report on the Authority's operations and affairs during the year.
- (4) The financial report shall be caused to be audited by such auditor and in the same manner as stipulated for the statement of accounts in section 65.
- (5) The auditor shall audit the financial report and make a report to the Authority whether, in his or her opinion, the financial report gives a true and fair view of the state of affairs of the Authority as at the end of the financial year to which it relates, and where the auditor is not of that opinion, the report shall state the reason.
- 67.** (1) The Authority shall, within a period of six months of the end of the financial year, submit, to the Minister, a comprehensive report on the operations of the Authority during that year, the financial report, together with the auditor's report and the accounts audited under section 65.
- (2) A report compiled in accordance with subsection (1), the financial report and the auditor's report shall be laid before the National Assembly within three months of its receipt, or as soon as practicable thereafter.
- 68.** The Authority shall cause to be conducted, by an independent auditor, a performance audit of its operations at intervals of a period not exceeding three years.

Submission of reports to Minister

Performance audit

PART XI – Miscellaneous provisions

- 69.** No matter or thing done or omitted to be done by a member or staff of the Authority shall, if the matter or thing is done or omitted to be done in good faith, in the course of the operations of the Authority, render a member or staff personally liable to an action, claim or demand.
- 70.** (1) A person who knowingly and wilfully makes a false statement, or a misleading statement, with a view to gaining any advantage, concession or privilege under this Act, whether for himself or for any other person, commits an offence and is liable to a fine not exceeding P250 000 or to imprisonment for a term not exceeding five years, or to both.
- (2) A certified auditor of P.I.E or partner in a firm for certified auditors of P.I.Es, who knowingly employs or engages any person as a certified auditor of P.I.E who was registered and —
- (a) whose name has been removed from the register and has not been restored; or
 - (b) who has been suspended from registration in terms of this Act, during the period of suspension, save with the prior written consent of the Authority, which consent may be given for such period and subject to such conditions as the Authority may determine,
- commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both.
- (3) Any certified auditor of P.I.E, Board member and employee of the Authority who contravenes or fails to comply with the provisions of this Act or rules made under this Act commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both.

Indemnity

Offences and penalties

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

Regulations

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

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

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

Rules of the Authority

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

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

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

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

Transitional provisions

- (a) is or has been providing audit and assurance services to a public interest entity, may continue to provide such services without being registered under this Act —
 - (i) during the period of six months beginning with the commencement date, and
 - (ii) where, within that period an application is made to register, until that application is finally disposed of or withdrawn; and
- (b) is or has been providing audit and assurance services to a public interest entity, whether or not on his or her own account, or in partnership with other persons under a firm, shall continue to provide such services under the firm —
 - (i) during the period of six months beginning with the commencement date, and
 - (ii) where, within that period an application is made for registration under this Act, until that application is finally disposed of or withdrawn.

PASSED by the National Assembly this 2nd day of August, 2010.

BARBARA N. DITHAPO,
Clerk of the National Assembly.