

CHAPTER 27:12

PUBLIC ACCOUNTANTS AND AUDITORS ACT

Act 13/1995, 22/2001 (s. 4).

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SCHEDULE

Powers of Board.

AN ACT to establish a Public Accountants and Auditors Board and to provide for its functions; to provide for the registration of public accountants and public auditors; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 12th April,1996.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Public Accountants and Auditors Act [*Chapter 27:12*].

2 Interpretation

(1) In this Act—

“audit” means the verification or certification of financial statements, financial transactions, books, accounts or records;

“Board” means the Public Accountants and Auditors Board established by section *four*;

“by-laws” means by-laws made by the Board in terms of section *forty-three*;

“constituent body” means a body specified in subsection (1) of section *three*;

“holder”, in relation to a practising certificate, means the person to whom the practising certificate was issued;

“member” means a member of the Board;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“Register” means the Register of Public Accountants and Public Auditors established in terms of section *nineteen*;

“registered” means registered in the Register;

“secretary of the Board” means the person appointed as secretary of the Board in terms of section *fourteen*.

(2) For the purposes of this Act, a person shall be deemed to practise as a public auditor if he carries out or offers to carry out an audit or auditing services for hire or reward.

3 Constituent bodies

(1) Subject to this section, the following bodies shall be constituent bodies for the purposes of this Act—

(a) the Zimbabwe branch of the Chartered Association of Certified Accountants incorporated by Royal Charter in the United Kingdom;

(b) the Zimbabwe branch of the Chartered Institute of Management Accountants incorporated by Royal Charter in the United Kingdom;

(c) the Institute of Chartered Accountants of Zimbabwe established by the Chartered Accountants Act [*Chapter 27:02*];

(d) the Institute of Chartered Secretaries and Administrators in Zimbabwe established by the Chartered Secretaries (Private) Act [*Chapter 27:03*];

(e) the Zimbabwe Institute of Public Finance and Accountancy, a locally incorporated company limited by guarantee.

(2) The Minister may, on the recommendation of the Board, by statutory instrument—

(a) declare that any body which is established in Zimbabwe to advance the interests of public accountants or public auditors shall be a constituent body for the purposes of this Act;

- (b) declare that any constituent body whose membership has fallen below a level which, in the opinion of the Board, no longer merits representation on the Board, shall cease to be a constituent body for the purposes of this Act;
- (c) amend subsection (1) to give effect to—
 - (i) any declaration referred to in paragraph (a) or (b); or
 - (ii) any change in the name of a constituent body specified in subsection (1).

PART II

PUBLIC ACCOUNTANTS AND AUDITORS BOARD

4 Establishment of 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, subject to this Act, of performing all acts that bodies corporate may by law perform.

5 Functions of Board

- (1) Subject to this Act, the functions of the Board shall be—
 - (a) to consider and determine applications for registration in terms of Part III;
 - (b) to maintain the Register;
 - (c) to issue practising certificates to registered persons in terms of Part IV and, in accordance with that Part, to cancel or suspend such certificates;
 - (d) to define and enforce ethical practice and discipline among registered persons;
 - (e) to encourage co-operation between the constituent bodies in matters of common interest;
 - (f) to take such steps as appear to the Board to be necessary or desirable to advance the standing and effectiveness of the accountancy profession in Zimbabwe;
 - (g) to represent the views of the accountancy profession on national, regional and international issues;
 - (h) to evaluate and monitor the standards of qualifying examinations, courses and training set or offered by the constituent bodies;
 - (i) to evaluate examinations and training courses of foreign institutions with a view to making recommendations to the constituent bodies;
 - (j) to promote the standardization of qualifying examinations on common subjects;
 - (k) to take such steps as appear to the Board to be necessary to provide for the manpower requirements of the accountancy profession in Zimbabwe.
- (2) For the better exercise of its functions, the Board shall have power to do or cause to be done all or any of the things specified in the First Schedule, either absolutely or conditionally and either solely or jointly with others.

6 Membership of Board

- (1) The Board shall consist of members appointed by the constituent bodies in terms of this section.
- (2) Each constituent body shall appoint to the Board two persons who are qualified for membership in terms of section seven.
- (3) A constituent body may appoint an alternate to any member appointed by it, and an alternate member—
 - (a) shall act as a member only when the member to whom he is alternate is for any reason unable to exercise his functions on the Board; and
 - (b) when acting as a member, shall exercise the functions of the member to whom he is alternate:

Provided that the alternates to the chairman and vice-chairman of the Board shall not exercise the functions of chairman or vice-chairman, as the case may be.

(4) As soon as possible after appointing a member or an alternate member to the Board, a constituent body shall inform the secretary of the Board, in writing, of the name and address of the member or alternative member so appointed.

7 Qualifications for membership of Board

- (1) Subject to subsection (2), a person shall be qualified for appointment to the Board if he is a member of a constituent body and is registered as a public auditor or a public accountant.
- (2) A person shall not be appointed as a member, and no person shall be qualified to hold office as a member, if—
 - (a) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
 - (b) he has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
 - (c) if the disciplinary authority of a constituent body, following disciplinary proceedings, has—
 - (i) directed that his membership of the constituent body concerned be cancelled; or
 - (ii) ordered his suspension from practice;

and his membership of the constituent body has not been restored or the period of his suspension has not elapsed, as the case may be; or

- (d) his registration is cancelled or he is suspended from practice following disciplinary action in terms of this Act; or
- (e) within the period of five years immediately preceding the date of his proposed appointment, he has been sentenced in any country to a term of imprisonment imposed without the option of a fine, whether or not any portion of the sentence has been suspended, and he has not received a free pardon.

8 Terms and conditions of office of members

(1) Unless they vacate their office earlier, members shall hold office for a period of four years from the date of their of appointment:

Provided that, of the persons first appointed by any constituent body, one member and one alternate member shall hold office for a period of two years from the date of their appointment.

(2) On the expiry of the period for which a member has been appointed, he shall continue to hold office until he has been reappointed or his successor has been appointed:

Provided that a member shall not hold office in terms of this subsection for a period exceeding six months.

(3) A member who resigns or retires shall be eligible for reappointment to the Board.

(4) A constituent body may at any time, by notice in writing to the secretary of the Board, cancel the appointment of a member whom it has appointed and appoint some other qualified person to hold his office for the unexpired period of that member's term of office.

(5) Members shall hold office on such terms and conditions, including terms and conditions relating to remuneration and the payment of allowances, as the Board may fix.

9 Vacation of office by member

(1) A member shall vacate his office and his office shall become vacant—

- (a) after giving the secretary of the Board such period of notice of intention to resign as may be fixed in his terms and conditions of service or, if no such period has been fixed, one month after the date on which he gives such notice, or after the expiry of such other period of notice as he and the Board may agree; or
- (b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine in any country; or
- (c) if he becomes disqualified in terms of section *seven* to hold office as a member; or
- (d) if his appointment is cancelled in terms of subsection (4) of section *eight*; or
- (e) if he is required in terms of subsection (2) to vacate his office.

(2) The Board, with the approval of the Minister, may require a member to vacate his office if the member—

- (a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or
- (b) has failed to comply with any term or condition of his office fixed in terms of subsection (5) of section *eight*; or
- (c) is mentally or physically incapable of efficiently exercising his functions as a member; or
- (d) has been absent without the permission of the Board from three consecutive meetings of the Board, of which he has had notice, and the Board is satisfied that there was no just cause for the member's absence.

(3) On the death of, or the vacation of office by, a member, the constituent body that appointed him shall appoint a qualified person to fill the vacancy for the unexpired period of the member's term of office:

Provided that, if the unexpired period of the member's term of office is less than six months, the constituent body need not fill the vacancy until the period has expired.

10 Chairman and vice-chairman of Board.

(1) At its first meeting in any financial year, the Board shall elect from amongst its members a chairman and a vice-chairman who shall hold office until the election of their successors.

(2) If the chairman or vice-chairman of the Board dies or ceases to be a member of the Board, the Board shall elect a successor at its next meeting, who shall hold office until the Board elects a new chairman or vice-chairman, as the case may be, in terms of subsection (1).

(3) The vice-chairman of the Board shall exercise the chairman's functions during any period that the chairman is unable to do so.

11 Meetings and procedure of Board.

(1) Subject to this section, the Board shall meet at such places and times for the dispatch of its business, and adjourn, close and otherwise regulate its meetings and procedure, as it thinks fit:

Provided that the Board shall meet at least four times a year.

(2) Meetings of the Board shall be convened by the secretary of the Board, who shall ensure that at least seven days' notice of any meeting is given to each member:

Provided that the unintentional failure to give such notice to any member shall not invalidate the proceedings of the meeting concerned.

(3) The secretary of the Board may himself at any time and shall, at the request of not fewer than four members, convene a special meeting of the Board, which meeting shall be convened for a date not sooner than seven days and not later than twenty-one days after receipt of such request.

(4) If the secretary of the Board is for any reason unable to exercise his functions in terms of subsection (2) or (3), the chairman shall exercise them.

(5) The chairman or, in his absence, the vice-chairman shall preside at meetings of the Board:

Provided that, if the chairman and vice-chairman are both absent from any meeting, the members present may elect one of their number to preside at the meeting as chairman.

(6) A majority of members shall form a quorum at any meeting of the Board.

(7) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(8) At all meetings of the Board, each member present shall have one vote on each question before the Board:

Provided that, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.

(9) If a member requires any matter which is being considered by a meeting of the Board to be deferred for consideration by the constituent bodies, that matter shall stand deferred to the next ordinary meeting of the Board, at which a decision on the matter may be taken.

(10) Any proposal circulated among all members and agreed to by a majority of them shall be of the same effect as a resolution passed at a duly constituted meeting of the Board:

Provided that, if a member requires that any such proposal be placed before the Board, this subsection shall not apply to the proposal.

12 Committees of Board

(1) For the better exercise of its functions, the Board may establish committees to which it may delegate, either absolutely or subject to conditions, such of its functions as it thinks fit:

Provided that—

- (i) such a delegation shall not prevent the Board from exercising the functions concerned;
- (ii) the Board may amend or withdraw any decision of a committee in the exercise of its delegated functions.

(2) The Board may appoint persons who are not members of the Board to be members of any committee established under subsection (1), and may fix the terms and conditions of notice of such persons.

(3) The procedure of any committee of the Board shall be as fixed by the Board.

(4) The Board shall fix the quorum of any committee of the Board.

(5) Subsections (5) to (7) and (10) of section *eleven* shall apply, *mutatis mutandis*, to committees and their members as they apply to the Board and its members.

13 Minutes of proceedings of Board and committees

(1) The Board shall cause minutes of all proceedings and decisions taken at all meetings of the Board and of its committees to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Board or of the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

14 Secretary and other staff of Board

The Board shall appoint a secretary and such members of staff as will enable the Board to carry out its functions in terms of this Act.

15 Funds of Board.

The funds of the Board shall consist of—

- (a) fees paid for registration and for the issue of practising certificates; and
- (b) levies paid to it by constituent bodies in terms of by-laws; and
- (c) any other moneys to which the Board may become entitled, whether by way of fees, gifts, loans or otherwise.

16 Financial year of Board.

The financial year of the Board shall be the period of twelve months ending on the 30th June in each year or on such other date as may be prescribed.

17 Accounts of Board and audit of accounts

- (1) The Board shall keep proper books of account and other records relating thereto in respect of all its activities, undertakings and property, including such particular accounts and records as the Minister may direct.
- (2) The Board shall—
 - (a) appoint as auditors one or more persons approved by the Minister who are registered public auditors; and
 - (b) ensure that its accounts are examined once in each financial year by the auditors appointed in terms of paragraph (a), in accordance with current auditing practice and such directions as the Minister may give the Board from time to time.

18 Reports and financial statements of Board

- (1) Within six months from the end of each financial year, the Board shall prepare a report and financial statements in respect of that financial year, and shall forthwith submit a copy of the report and financial statements to the Minister and to each constituent body.
- (2) In addition to the annual report referred to in subsection (1), the Board—
 - (a) shall submit to the Minister such other reports as the Minister may require; and
 - (b) may submit to the Minister such other reports as the Board may consider advisable;in regard to the functions, operations and property of the Board.
- (3) The Board shall give the Minister all such information relating to its functions, operations and property as the Minister may at any time require.
- (4) The Minister may lay a report submitted to him in terms of subsection (1) or (2) before Parliament.

PART III

REGISTER AND REGISTRATION

19 Register of Public Accountants and Public Auditors

- (1) The Board shall establish a register, to be known as Register of Public Accountants and Public Auditors, which shall be divided into two parts, one for the registration of public accountants and the other for the registration of public auditors.
- (2) The secretary of the Board shall be responsible, subject to any directions given to him by the Board, for maintaining the Register and ensuring that entries are made in the appropriate part of the Register recording—
 - (a) the name and such other particulars as may be prescribed of each person whom the Board has directed shall be registered; and
 - (b) the fact that a practising certificate has been issued to a registered person, or that any such practising certificate has ceased to be valid; and
 - (c) particulars of the cancellation or suspension of any person's registration, and of the restoration of any such cancelled registration or the termination of any such suspension; and
 - (d) any necessary corrections or alterations to any particulars or facts referred to in paragraph (a), (b) or (c); and
 - (e) any other particulars that may be prescribed or that the Board may determine.

20 Register to be open to inspection

Any person may inspect the Register and make copies of any entry therein at all reasonable times on payment of such fee as may be prescribed:

Provided that no such fee shall be payable by—

- (a) a police officer or member of the Public Service acting in the course of his duty as such; or
- (b) any other person whom the secretary of the Board has authorized to inspect the Register.

21 Qualifications for registration

- (1) Subject to subsection (3), a person shall be qualified for registration as a public accountant if he is a member in good registration standing of any constituent body.
- (2) Subject to subsection (3), a person shall be qualified for registration as a public auditor if he is a member in good standing of—
 - (a) the Institute of Chartered Accountants of Zimbabwe established under the Chartered Accountants Act [Chapter 27:02]; or
 - (b) the Zimbabwe branch of the Chartered Association of Certified Accountants incorporated by Royal Charter in the United Kingdom, and—
 - (i) holds an auditing practising certificate issued in the United Kingdom and recognized by the Board; and
 - (ii) has passed examinations approved for the purpose of this section by the Board in consultation with the Zimbabwe branch of the Chartered Association of Certified Accountants incorporated by Royal Charter in the United Kingdom.
- (3) A person shall not be qualified for registration if—

- (a) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
 - (b) he has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
 - (c) within the period of five years immediately preceding his application for registration—
 - (i) he has been convicted inside or outside Zimbabwe of a criminal offence which, in the opinion of the Board, is of a disgraceful or dishonourable nature; or
 - (ii) he has behaved in a manner which, in the opinion of the Board, is of a disgraceful or dishonourable nature;
- or
- (d) he has been certified either inside or outside Zimbabwe to be mentally disordered or defective or of unsound mind in terms of the Mental Health Act [*Chapter 15:06*] or an equivalent law in a foreign country, and the certification remains in force.
- (4) Before reaching a decision as to whether or not a person is disqualified for registration in terms of subsection (3), the Board shall—
- (a) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person as the Board thinks fit; and
 - (b) pay due regard to any representations made by him in terms of paragraph (a).

22 Application for registration

(1) Any person who wishes to be registered as a public accountant or a public auditor shall submit to the constituent body of which he is a member an application therefor in the form and manner prescribed, together with the prescribed registration fee.

(2) On receipt of an application in terms of subsection (1), the secretary or registrar or other executive officer of the constituent body concerned shall certify in writing whether or not the applicant—

- (a) is a member in good standing of the constituent body; and
 - (b) is qualified for registration as a public accountant or a public auditor, as the case may be;
- and shall forward the application, together with the registration fee, to the secretary of the Board.

23 Registration

(1) The Board shall consider every application for registration forwarded to it in terms of section *twenty-two*, and—

- (a) if the Board is satisfied that the applicant is qualified for registration, the Board shall direct the secretary of the Board to register the applicant in the appropriate part of the Register;
- (b) if the board is not so satisfied, the Board shall refuse the application and direct the secretary of the Board to notify the applicant in writing of its decision.

(2) Whenever the secretary of the Board registers a person in terms of this section, he shall issue that person with a certificate in the form prescribed, indicating the part of the Register in which that person has been registered.

24 Cancellation or suspension of registration

(1) Subject to subsection (4), the Board shall direct the secretary of the Board to cancel the registration of any registered person who—

- (a) has ceased to be a member of any constituent body; or
- (b) has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country; or
- (c) has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country; or
- (d) has been convicted inside or outside Zimbabwe of a criminal offence which, in the opinion of the Board, is of a disgraceful or dishonourable nature; or
- (e) is certified either inside or outside Zimbabwe to be mentally disordered or defective or of unsound mind in terms of the Mental Health Act [*Chapter 15:06*] or an equivalent law in a foreign country.

(2) Subject to subsection (4), the Board shall direct the secretary of the Board to cancel the registration of a person as a public auditor if he has ceased to be a member of the institute or association referred to in subsection (2) of section *twenty-one*.

(3) Subject to subsection (4), if the Board is notified in writing by a constituent body that it has suspended the membership of a registered person, the Board shall suspend that person's registration for the same period as his membership has been suspended.

(4) Before reaching a decision as to whether or not a registered person's registration should be cancelled or suspended in terms of subsection (1) or (2), the Board shall—

- (a) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person as the Board thinks fit; and
- (b) pay due regard to any representations made by him in terms of paragraph (a).

(5) Whenever the secretary cancels or suspends a person's registration in terms of this section, he shall notify that person, in writing, of the cancellation or suspension.

25 Restoration of registration

(1) The Board shall direct the secretary of the Board to restore to the Register the name of a person whose registration was cancelled on the ground referred to in paragraph (a) of subsection (1) of section *twenty-four*, if a constituent body notifies the Board, in writing, that he has become a member of the body or has had his membership restored.

(2) The Board shall direct the secretary of the Board to restore to the Register as a registered public auditor the name of a person whose registration was cancelled on the ground referred to in subsection (2) of section *twenty-four*, if the institute or association referred to in subsection (2) of section *twenty-one* notifies the Board, in writing, that he has become a member of the institute or association or has had his membership restored.

(3) A person whose registration has been cancelled in terms of section *twenty-four* may apply for his registration to be restored, and sections *twenty-one* to *twenty-three* shall apply, *mutatis mutandis*, as if he were applying for registration.

PART IV

PRACTISING CERTIFICATES

26 Prohibition against practice without practising certificate

(1) Subject to subsection (2) and to section *forty-five*, no person shall practise as a public accountant or a public auditor, whether directly or indirectly, by himself or in partnership or association with any other person, except in accordance with the terms and conditions of a valid practising certificate which authorizes him to practise as a public accountant or public auditor, as the case may be.

(2) Subsection (1) shall not apply to anything done by a registered person which he could lawfully do as an unregistered person in terms of section *thirty-nine*.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(4) Conviction for an offence under subsection (3) shall not be a bar to a further prosecution or conviction if the offence continues.

27 Application for practising certificate

A person who wishes to obtain a practising certificate shall apply to the Board in the form and manner prescribed, and shall submit with his application such fee, certificates, documents and information as may be prescribed.

28 Issue or refusal of practising certificate

(1) On receipt of an application for a practising certificate in terms of section *twenty-seven*, the Board shall issue a practising certificate to the applicant authorizing him to practise as a public accountant or a public auditor if the Board is satisfied that the applicant—

- (a) is registered as a public accountant or a public auditor, as the case may be; and
- (b) is a member in good standing of a constituent body;

and, if the Board is not so satisfied, it shall refuse to issue the practising certificate concerned and shall advise the applicant accordingly.

(2) Where an applicant who already holds a practising certificate authorizing him to practise as a public accountant has applied for a practising certificate authorizing him to practise as a public auditor, the Board shall require him to surrender his existing practising certificate before issuing him with a new practising certificate.

29 Period of validity of practising certificates

(1) Subject to this section, a practising certificate shall remain valid for so long as its holder remains registered.

(2) A practising certificate which authorizes its holder to practise as a public auditor shall cease to be valid in so far as it relates to practice as a public auditor, if its holder ceases to be registered as a public auditor.

30 Terms and conditions of practising certificates

(1) A practising certificate may be issued subject to such terms and conditions as may be prescribed or as the Board may determine after consultation with the constituent body of which the holder of the certificate is a member.

(2) Any terms and conditions determined in terms of subsection (1) shall be endorsed on the practising certificate concerned.

(3) If, following any disciplinary action against a public accountant or a public auditor, conditions are imposed upon his entitlement to practise, the public accountant or public auditor shall forthwith return any practising certificate held by him to the secretary of the Board, who shall endorse the conditions on the certificate.

(4) A practising certificate shall not authorize its holder to practise as a public accountant or public auditor while his registration as such is suspended in terms of this Act.

31 Withdrawal of practising certificates

If, after due inquiry, the Board is satisfied that a public accountant or public auditor has not complied with any term or condition of a practising certificate held by him, the Board may withdraw the practising certificate and, if it does so, the secretary of the Board shall advise the public accountant or public auditor accordingly.

32 Surrender of withdrawn or invalid practising certificates

Where a person has been advised in writing by the drawn secretary of the Board that a practising certificate issued to him has been withdrawn or has ceased to be valid, he shall forthwith and in any event within thirty days after being so advised return the practising certificate to the secretary for destruction.

PART V

DISCIPLINE

33 Rules of professional conduct

(1) The Board may in by-laws prescribe rules of professional conduct to be observed by registered persons.

(2) Each constituent body may make rules, in accordance with the enactment under which it is established or its constitution, as the case may be, governing the professional conduct of its members who are registered persons:

Provided that no such rules shall be inconsistent with rules made by the Board under subsection (1).

34 Disciplinary proceedings

Each constituent body shall be responsible, in the first instance, for the professional conduct of its members who are registered persons and, for that purpose, each constituent body shall have power, in accordance with the enactment under which it is established or its constitution as the case may be, to undertake disciplinary proceedings against such members and to punish them for breaches of the rules referred to in section *thirty-three*.

35 Review of disciplinary proceedings

(1) Where a constituent body has found that a member who is a registered person has contravened any rule referred to in section *thirty-three*, the constituent body shall report that fact to the Board in writing within fourteen days, and shall provide the Board with such information regarding the case as the Board may reasonably require.

(2) If, after the thirty-day period specified in section *thirty-six*, the member concerned has not lodged an appeal under that section, the Board shall forthwith review the decision of the constituent body in any case reported to it under subsection (1):

Provided that, if the Board agrees to hear an appeal after the thirty-day period, it needs not review the case under this subsection.

(3) In a review under subsection (2), the Board may confirm, alter or set aside the decision of the constituent body concerned or refer the matter back to the constituent body for further consideration:

Provided that the Board shall not alter or set aside the decision unless it is satisfied that—

(a) the constituent body concerned failed to follow any procedure which, by or under any enactment or its constitution, it was required to follow in disciplinary proceedings; or

(b) the constituent body concerned failed to observe the rules of natural justice; or

(c) the decision of the constituent body concerned was unreasonable in all the circumstances of the case;

and that a substantial miscarriage of justice ensued.

36 Appeal to Board against disciplinary action.

(1) A registered person whose membership of a constituent body has been suspended or cancelled following disciplinary proceedings against him may appeal in writing to the Board, setting out clearly the grounds of his appeal, within thirty days after being informed of his suspension or cancellation, or within such further period as the Board may allow.

(2) An appeal under subsection (1) shall be lodged in the form and manner prescribed.

(3) The Board shall forward a copy of any appeal lodged with it under subsection (1) to the constituent body concerned, and the constituent body shall, within thirty days or such longer period as the Board may permit, provide the Board with such number of copies of the record of the disciplinary proceedings as may be prescribed.

(4) After affording the appellant and the constituent body concerned a reasonable opportunity to make representations in the matter, the Board shall consider any appeal under this section and may confirm, alter or set aside the decision of the constituent body concerned or refer the matter back to the constituent body for further consideration.

(5) If the Board receives oral evidence in an appeal under this section, it shall ensure that a record is kept of such evidence.

(6) If in an appeal under this section the Board confirms the suspension or cancellation of the appellant's registration, the Board may make an order requiring the appellant to pay the expenses of and incidental to the appeal, or any part of those expenses.

(7) The Board may recover from the appellant concerned any amount he has been ordered to pay under subsection (6) by proceedings against him in a court of competent jurisdiction.

PART VI

GENERAL

37 Use of certain designations

(1) A registered public accountant shall be entitled to use the designation "Registered Public Accountant (Zimbabwe)" or the initials "R.P.Acc.(Z)".

(2) A registered public auditor shall be entitled to use the designation "Registered Public Auditor (Zimbabwe)" or the initials "R.P.A.(Z)".

38 Offences by unregistered persons

(1) Subject to section *thirty-nine* and any other enactment, no person other than a registered public accountant shall—

- (a) hold himself out to be a registered public accountant; or
- (b) use the designation or initials referred to in subsection (1) of section *thirty-seven* or any other name, title, description or letters indicating that he is a registered public accountant, whether by advertisement or description or in any document.

(2) Subject to section *thirty-nine* and any other enactment, no person other than a registered public auditor shall—

- (a) practise as a public auditor; or
- (b) hold himself out to be a registered public auditor; or
- (c) use the designation or initials referred to in subsection (2) of section *thirty-seven* or any other name, title, description or letters indicating that he is a registered public auditor, whether by advertisement or description or in any document.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(4) A conviction for an offence under subsection (3) shall not be a bar to a further prosecution or conviction if the offence continues.

39 Exemptions

(1) Section *thirty-eight* shall not prevent a person who—

- (a) is employed exclusively at a salary and does not carry 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
- (b) without receiving any fee or reward, prepares or reports on the accounts of a club, society, institute or other association not established for the acquisition of gain, from describing himself as an honorary auditor in relation to the preparation of or reporting on such accounts.

(2) Any person in the *bona fide* employment of—

- (a) a registered public accountant; or
- (b) a company or partnership referred to in subsection (5);

shall not be regarded as practising as a public accountant or as holding himself out to be a registered public accountant for the purposes of section *thirty-eight* in respect of anything done in the course of such employment while under the direction and control of a registered public accountant.

(3) Any person in the *bona fide* employment of—

- (a) a registered public auditor; or
- (b) a company or partnership referred to in subsection (5);

shall not be regarded as practising as a public auditor or as holding himself out to be a registered public auditor for the purposes of section *thirty-eight* in respect of anything done in the course of such employment while under the direction and control of a registered public auditor.

(4) Section *thirty-eight* shall not apply to any person in the full-time employment of the State, a statutory body or a local authority in respect of anything done by him in the course of such employment.

(5) Notwithstanding section *thirty-eight*, a company or partnership whose directors or partners, as the case may be—

- (a) are registered public accountants or registered public auditors; and

- (b) hold practising certificates; and
- (c) directly control and manage the provision of accounting or auditing services by the company or partnership;

may practise as a public accountant or public auditor.

40 Appeals from decisions of Board

(1) Any person who is aggrieved at any decision of the Board in terms of Part III, IV or V may, within thirty days after being advised of the decision, appeal to the High Court in such manner as may be prescribed in rules of court made in terms of the High Court Act, [Chapter 7:06].

(2) In an appeal in terms of subsection (1), the High Court may—

- (a) confirm, vary or set aside the decision appealed against; or
- (b) remit the matter to the Board for further consideration;

and may make such other order, whether as to costs or otherwise, as it thinks just.

(3) The noting of an appeal in terms of subsection (1) against a decision of the Board under section *thirty-one* to withdraw a practising certificate shall not suspend the decision appealed against, unless—

- (a) the Board, by written notice to the public accountant or public auditor concerned, agrees otherwise; or
- (b) the High Court on application directs otherwise;

in which event the Board shall return the practising certificate to the appellant pending the outcome of the appeal.

41 Evidence

(1) The Register shall be *prima facie* proof of all matters directed or authorized by or under this Act to be noted therein.

(2) A certificate purporting to be signed by the secretary of the Board to the effect that—

- (a) the name of a person appears in any specified part of the Register, shall be *prima facie* proof that the person is a registered public accountant or a registered public auditor, as the case may be;
- (b) the name of a person has been deleted or removed from or does not appear in the Register or any specified part thereof, shall be *prima facie* proof that the person is not a registered public accountant or a registered public auditor, as the case may be;
- (c) a registered person has been suspended from practice for a specified period, shall be *prima facie* proof that he has been suspended for that period;
- (d) a registered person is or is not the holder of a practising certificate, shall be *prima facie* proof of that fact;
- (e) any terms or conditions were endorsed on any practising certificate, shall be *prima facie* proof of those terms or conditions.

(3) A certificate referred to in subsection (2) or a copy of an entry in the Register or of a document in the custody of the secretary of the Board, or an extract from the Register or any such document shall, if it purports to be certified by the secretary of the Board, be admitted in evidence in any court on its production by any person without further proof or production of the original.

42 Maintenance of standards of examinations

(1) After consultation with all the constituent bodies, the Board may recommend that a constituent body adopt any syllabus, training requirement or examination structure the adoption of which, in the Board's opinion, is necessary or desirable to maintain or enhance professional standards.

(2) If a constituent body proposes to change any syllabus, training requirement or examination structure applicable to its members or prospective members, it shall advise the Board, in writing, of the proposal at least three months before making any such change.

(3) If the Board considers that any proposal of which it has been advised under subsection (2) will be detrimental to the interests of the profession, it shall advise the constituent body concerned in sufficient time to enable the constituent body to cancel or modify the proposed change in the light of the Board's attitude.

(4) If any constituent body—

- (a) fails or refuses to adopt any syllabus, training requirement or examination structure recommended by the Board under subsection (1); or
- (b) changes any syllabus, training requirement or examination structure in a manner which the Board has advised will be detrimental to the interests of the profession;

the Board may refuse to register any persons who thereafter become members of that constituent body.

43 By-laws

(1) Subject to subsection (3), the Board may make bylaws prescribing anything which in terms of this Act is required to be prescribed or which, in the Board's opinion, are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) By-laws made in terms of subsection (1) may provide for—

- (a) fees which shall be payable in connection with registration, the issue of certificates and anything else issued or done in terms of this Act;
 - (b) the issue of duplicate, corrected or amended certificates of registration;
 - (c) the form of the Register and the circumstances in which it may be inspected by members of the public;
 - (d) the levies payable by the constituent bodies to the Board;
 - (e) applications for practising certificates and the form of such certificates;
 - (f) the procedure for reviews by and appeals to the Board under Part V.
- (3) By-laws shall not have effect until they have been approved by the Minister and published in the *Gazette*.

44 Transitional provisions

(1) In this section—

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date of commencement of this Act.

(2) Notwithstanding anything to the contrary in Part II, the first members appointed to the Board by each constituent body need not be registered persons if they are appointed before the fixed date.

(3) Notwithstanding anything to the contrary in Part III, every person who, on the fixed date, is a member of a constituent body and qualified for registration as a public accountant or a public auditor shall be deemed to have been so registered on the fixed date.

(4) The secretary of the Board shall, in accordance with section *twenty-three*, enter in the appropriate part of the Register the names of all persons who are deemed in terms of subsection (3) to have been registered, and shall issue to each such person a certificate of registration.

(5) Notwithstanding anything to the contrary in Part IV, persons who are deemed in terms of subsection (3) to have been registered may practise as public accountants or public auditors, as the case may be, for a period of six months after the fixed date, or such longer period as the Minister may fix in a statutory instrument, without being the holders of practising certificates.

SCHEDULE (Section 5 (2))

POWERS OF BOARD

1. To purchase, hire or otherwise acquire immovable property and to construct buildings.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of the Board’s functions.
3. To maintain, alter or improve its property.
4. To sell, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with any property which is not required for the Board’s purposes, for such consideration, if any, as the Board may determine.
5. To raise or borrow money in such manner as the Board thinks fit.
6. To invest, in such manner and on such security, if any, as the Board may determine, any of its funds which are not immediately required and to vary or realize any investments so made.
7. To insure against losses, damages, risks and liabilities which the Board may incur.
8. To fix the conditions of service of its employees appointed under section *fourteen*, to pay them such remuneration and allowances and grant them such leave of absence and to make them such gifts, bonuses and the like as the Board thinks fit and, where the Board considers it appropriate, to suspend or discharge them.
9. To provide benefits for its employees and their dependants on the employees’ retirement, resignation, discharge or other termination of service or in the event of their sickness or injury, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as the Board considers necessary to secure for its employees and their dependants the benefits referred to in this paragraph.
10. Generally, to do all things that are calculated to facilitate or are incidental or conducive to the performance of the Board’s functions under this Act or any other enactment.