

DRAFT PROPOSALS FOR THE FINANCIAL REPORTING OVERSIGHT LAW

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AN ACT of Parliament to provide for the establishment of a Financial Reporting Oversight Board and a Public Interest Entities Tribunal for the purpose of fostering investment and protecting investors and other stakeholders by means of regulation of the reporting of financial and other information by public interest entities and the audit of such entities, registration of public interest entities, certification and registration of auditors and firms of auditors conducting audits of such entities, independent oversight of the regulatory, disciplinary and associated public interest duties and functions of the Institute of Certified Public Accountants of Kenya and the duties and functions of KASNEB in relation to the accounting and auditing profession and for connected purposes.

ENACTED by the Parliament of Kenya as follows -

PART I PRELIMINARY

1 This Act may be cited as the Financial Reporting Oversight Act 2012.

2 In this Act, unless the context otherwise requires –

“annual report” means the document that an entity issues annually on its affairs and includes all elements thereof, including the directors’ and other reports, the entity’s financial statements together with the audit report.

“annual revenue” means the gross revenue accruing to an entity during its most recent financial year.

“audit” means an examination of the financial statements of an entity that enables an auditor to form and express an opinion in an audit report on whether –

(a) the information presented in the annual report and financial statements constitutes a true and fair representation of the financial position of the entity 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 all material respects, in accordance with the financial reporting framework for the time being applicable in Kenya;

provided that this definition shall, for the avoidance of uncertainty, be interpreted by reference to the international standards for auditing, quality control, review and other assurance and related services published from time to time by the International Auditing and Assurance Standards Board of the International Federation of Accountants, hereinafter mentioned.

“auditor” means an individual or a firm that conducts an audit and, more generally, provides audit and assurance services, which definition shall be construed by reference to “audit” as defined above.

“Board” means the Financial Reporting Oversight Board established under this Act and, where appropriate, shall include any entity acting under delegated authority of the Board;

“entity” means any person or body of persons and includes, but is not restricted to, an organization or business that has a legal and separately identifiable existence, whether incorporated or unincorporated;

“Institute” shall mean the Institute of Certified Public Accountants, established under the Accountants Act;

“KASNEB” means the board established as the Kenya Accountants and Secretaries National Examinations Board under the Accountants Act;

“officer” (a) in its application to a public interest entity (PIE) means the chairman and any director, the chief executive, the chief operating officer, finance director or chief financial officer, by whatever title, and any other person responsible for the preparation or presentation of financial information of the entity; (b) in its application to the Board and its functions and powers means any person who is designated as an officer by the Board or the Chief Executive under this Act;

“Minister” means the Minister responsible for financial affairs;

“PIE” means public interest entity, as defined in Section 3;

“PIE auditor” means a person certified and registered as such under this Act;

“PIE audit firm” means a firm certified and registered as such under this Act;

“President” means the President of the Republic of Kenya;

“professional misconduct” shall, subject to any necessary modification, include any act or omission specified as constituting professional misconduct in the Accountants Act ;

“regulatory authority” means any entity recognised as such under written law;

“recognized self-regulatory organization” means an organization recognised as such under the Capital Markets Act;

“register” shall mean the register of PIEs, PIE auditors and PIE audit firms established under this Act;

“senior officer” means any person designated as a senior officer by the Board or the chief executive under this Act;

“stakeholders” shall include PIEs and officers thereof and all persons and entities certified or registered by the Board;

“Tribunal” shall mean the Public Interest Entity Tribunal established under this Act;

3 For the purposes of this Act, “public interest entity” means –

- (a) any entity subject to the supervision, control or rules of –
 - (i) the Capital Market Authority Kenya;
 - (ii) the Central Bank of Kenya;
 - (iii) the Insurance Regulatory Authority; or
 - (iv) the Nairobi Stock Exchange; and
 - (v) their successor bodies;
- (b) any savings and credit co-operative (SACCO);
- (c) any entity in respect of which any two of –
 - (i) the annual revenue;
 - (ii) the number of employees;
 - (iii) the total assets;
 - (iv) the total liabilities, not including shareholder equity, as at the end of the most recent accounting year of that entity;exceed the amount or number that the Minister may respectively prescribe from time to time in regulations under this Act;
- (d) any entity which the Board may from time to time deem to be a PIE, whether fiduciary or not.

4 In this Act, “public interest entity” shall hereinafter be referred to by the acronym “PIE”.

PART II - ESTABLISHMENT OF FINANCIAL REPORTING OVERSIGHT BOARD

5 (1) There is established a board to be known as the Financial Reporting Oversight Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall be capable in its corporate name of –

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(3) The Board shall consist of –

- (a) a chairman and a vice-chairman to be appointed by the President on the recommendation of the Minister;
 - (b) five other members appointed by the Minister, two of whom shall be experienced fellows or full members of the Institute (hereinafter referred to in the context of the Board as “experts”;
 - (c) the Auditor General or a person deputed by him in writing for the purposes of this Act;
 - (d) the Accountant General or a person deputed by him in writing for the purposes of this Act;
 - (e) the chief executive of the Board.
- (4) The chairman, vice-chairman, and every member appointed under paragraph (b) of Subsection (3), shall be appointed from amongst persons who have experience and expertise in accounting, auditing, financial regulation, capital markets, finance, business, corporate law and the preparation, presentation and interpretation of financial information.
- (5) The chairman, vice-chairman, and every member appointed under paragraph (b) of Subsection (3), shall hold office for a period of four years and shall be eligible for re-appointment for a further term of four years.
- (6) The chairman or vice-chairman shall cease to hold office if –
- (a) he delivers to the Minister a written resignation of his appointment and the President accepts the resignation; or
 - (b) the President removes him from office;
- (7) In the event of a vacancy arising in the office of the chairman or vice-chairman, the President may appoint a replacement on the advice of the Minister.
- (8) The Minister may, by means of written notice, remove from office any member appointed under paragraph (b) of sub-Section (3) who –
- (a) Is medically certified, or certified under the law, as being incapacitated by mental or physical illness or otherwise unable or unfit to discharge the functions of a member effectively; or
 - (b) has been absent from three consecutive meetings of the Board without leave or good cause; or
 - (c) fails, without reasonable excuse, to carry out his duties as a Board member or behaves in a manner which impairs or disrupts the efficient conduct of business or;
 - (d) being a fellow or full member of the Institute, is found guilty of professional misconduct; or

(e) contravenes any provision of this Act or otherwise conducts himself in a manner which could bring the Board into disrepute or is contrary to its objectives or the public interest; or

(d) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or

(e) is sentenced by a court to imprisonment for a term of six months or more; or

(f) is convicted of an offence involving dishonesty, fraud or moral turpitude;

(9) A member removed from office under this Subsection shall immediately vacate office, provided that no member shall be deemed to be in contravention of a provision of this Act or to guilty of an offence under this sub-Section until either that member declines or fails to lodge an appeal within the permitted time or the conviction and, in the case of imprisonment for an offence other than an offence under Subsection(f), the term of imprisonment of six months or more is confirmed on final appeal.

(10) A member elected under paragraph (b) of Subsection (3) may resign from office by written notice to the Minister.

(11) In the event of the resignation or removal from office of any member appointed under paragraph (b) of Subsection (3) the Minister may appoint another person to hold office for the unexpired period of the term of office of the member in whose place he is appointed.

(12) If any member of the Board appointed under paragraph (b) of Subsection (3) is temporarily unable to perform his functions, the Minister may appoint another person to act in his place during the period of his absence.

(13) An ex officio member of the Board, or a person deputed in writing for the purposes of this Act, shall serve by virtue of the office the ex officio member holds, subject to the right of the ex officio member, with the consent of the Minister, to revoke the appointment of the person so deputed and appoint another person in his place.

(14) The members of the Board shall be paid such remuneration and allowances out of the general fund of the Board as may be determined by the Minister.

PART III – MEETINGS AND PROCEEDINGS OF THE BOARD

6 (1) The Board shall meet not less than six times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting, provided that the Board shall meet as necessary to deal with any issue which the chairman shall deem to be too urgent to await a normally scheduled meeting.

(2) The quorum for the conduct of the business of the Board shall be six members including the chief executive, provided that at least one expert and one ex officio member or his substitute is present.

(3) The chairman, whom failing the vice-chairman, shall preside at every meeting of the Board at which he is present and, in the absence of both the chairman and the vice-

chairman, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(4) All questions for decision at any meeting of the Board shall be decided by the vote of the majority of the members present and in case of an equality of votes the chairman, vice-chairman or other person presiding over the meeting shall have a casting vote.

(5) If the chairman or vice-chairman of the Board, by reason of extended illness or absence, is temporarily unable to perform the functions of his office, the President may, on the advice of the Minister, appoint a substitute to act in his place during the period of absence.

(6) All members of the Board shall be subject to the provisions of written laws and other requirements relating to declaration of interest, conduct, confidentiality and all other relevant rules applicable to members of public bodies and shall be liable to any penalties under the law for any breach thereof and may, in the discretion of the Minister, be removed from office.

(7) Without prejudice to the generality of Subsection (6), any member of the Board who has a direct or indirect interest in any decision that is to be taken on any specific non-rule making matter by the Board shall disclose the nature of such interest at the meeting of the Board where such decision is being taken and the disclosure shall be recorded in the minutes of the meeting, and if either the member or majority of the members of the Board believe that such member's interest in the matter is such as to influence his judgment, he shall not participate in the deliberation or the decision of the Board on such matter;

(8) Notwithstanding the provisions of Subsection (7), if a majority of the members in attendance at a meeting where such matter is considered determine that the experience or expertise of the interested member is necessary for the deliberation on the matter, they may permit such member to participate as they deem appropriate.

7. The Board may invite any person whom it believes may assist the Board in its deliberations or the conduct of its business to attend and participate in a meeting, but no such person shall count towards the constitution of a quorum or be entitled to vote.
8. The Chief Executive or, if he is for good reason or with the leave of the Board, unable to attend, a senior officer nominated by him, shall attend all meetings of the Board and shall have the right to be heard, but the presence of the Chief Executive or his nominee shall not count towards the constitution of a quorum and neither the chief executive nor his nominee shall be entitled to vote.
9. (1) The common seal of the Board shall be kept in the custody of the Board and shall not be affixed to any instrument or document except as authorized by the Board.

(2) The common seal of the Board shall be authenticated by the signature of the chief executive and the chairman or of one other member authorized by the Board in that behalf.

(3) All documents, other than those required by law to be under seal, approved by the Board, and all decisions of the Board may, unless otherwise specified, be issued under the hand of the chairman or, in the case of a decision taken at a meeting at which the chairman is not present, under the hand of the vice-chairman or other person presiding at such meeting.

PART IV – CHIEF EXECUTIVE AND OTHER STAFF OF THE BOARD

- 10 (1) There shall be a chief executive of the Board who shall be appointed by the President on the recommendation of the Minister in accordance with Subsection (3) and who shall, subject to this Section, hold office on such terms and conditions of service as may be specified in the instrument of appointment, or otherwise from time to time.
- (2) No person shall be qualified for appointment under this Section unless such person –
- (a) has at least ten years' experience at a senior level in management, the accountancy profession or academe in matters relating to accounting, auditing, financial regulation, capital markets, finance, corporate law and the preparation, presentation and interpretation of financial information ; and
 - (b) has expertise in matters relating to financial reporting or regulation and internationally recognized financial reporting, auditing and related standards .
- (3) The Minister, in consultation with the Board, shall recommend to the President a person qualified in terms of this Section for appointment as the chief executive.
- (4) The chief executive shall hold office for a period of five years but shall be eligible for reappointment for a further term of five years, provided that no person shall serve as the Chief Executive for more than two terms.
- (5) The chief executive shall, subject to the general discretion and control of the Board, be charged with the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, duties and functions, and the administration and control of other staff officers and servants of the Board.
- 11 (1) The Authority may appoint such other officers and servants as it considers necessary for the efficient discharge of its responsibility and functions.
- (2) The Board shall, on the recommendation of the chief executive, appoint senior officers , who shall be designated as such on appointment or during their employment by the Board, to serve for a term not exceeding five years and may be reappointed by the Board on the recommendation of the chief executive; and the chief executive shall appoint other staff.
- (2) Every senior officer and other member of staff appointed under Subsection (1) shall be remunerated in such manner and at such rates, and shall be subject to such conditions of service, as may be determined by the Board.
- (3) Every senior and other member of staff appointed under Subsection (1) shall, subject to this Act, exercise such powers and functions and perform the functions assigned to him from time to time by the chief executive.
- 12 (1) Neither the Board, nor any of its members, officers or servants shall be personally liable for any act which in good faith is done or purported to be done by such person, on the direction of the Board or in the performance or intended performance of any duty or in the exercise of any power under this Act or any regulations made thereunder.

(2) Any expenses incurred by any person referred to in Subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under the Act or on the direction of the Board shall, if the court holds that such act was done in good faith, be paid out of the general fund of the Board, unless such expenses are recovered by him in such suit or prosecution.

(3) The provisions of Subsections (1) and (2) shall apply to any member, officer or servant of any committee, panel or other group appointed by the Board and to any other person to whom the Board has delegated functions under this Act.

PART V – OBJECTIVES, FUNCTIONS AND POWERS OF THE BOARD

13 (1) The objectives of the Board shall be -

- (a) protection of investors, employees and other stakeholders of PIEs;
- (b) enhancement of the standard, reliability and credibility of financial and non-financial information provided by PIEs;
- (c) promotion of the highest professional and ethical standards among directors and officers of PIEs;
- (d) promotion of the highest professional and ethical standards among auditors of PIEs and other members of the accountancy profession operating in the corporate sector;
- (e) Proportionate and risk based oversight of financial reporting and auditing of PIEs;
- (f) Proportionate and risk based oversight of PIE auditors, audit firms and of the Institute in respect of its regulatory, disciplinary and other public interest duties and functions, including the provision and monitoring of post-qualifying training of its members;
- (g) Oversight of the regulatory, disciplinary and related post-qualifying training and support functions of the Institute;
- (h) Oversight of the content and quality of the pre-qualifying education, training and examination of accountants and auditors.

(2) In pursuance of the objectives contained in the foregoing provisions, the functions of the Board shall include -

- (a) Promotion and enforcement of compliance with legal requirements and the standards, codes guidelines and other pronouncements of –
 - (i) The International Accounting Standards Board/IFRS Foundation;
 - (ii) The International Auditing and Assurance Standards Board;
 - (iii) The International Ethics Standards Board of the International Federation of Accountants;

- (iv) The International Accounting Education Standards Board; and
- (v) The successors of each of the above named organizations;

and with other standards, codes, guidelines or other pronouncements published by the Institute under the Accountants Act .

- (b) the monitoring and review of accounts and financial and other reports, including annual reports and directors' reports issued by PIEs, on a programmed basis and with due regard to risk of non-compliance, and the identification of any malpractice, breach of obligations, negligence or other shortcomings on the part of the officers of such entities or of any failure to comply with any relevant reporting requirements contained in any laws or standards, codes or guidelines from time to time in force;
- (c) the conduct of practice reviews of PIE auditors and PIE audit firms and review of audits of PIEs, on a programmed basis and with due regard to risk assessment and management, to determine whether PIE auditors and PIE audit firms are compliant with all relevant professional standards from time to time in force, including auditing, ethical and quality assurance standards;
- (d) the investigation of complaints and alleged lack of compliance and other breaches of this Act and any rules, regulations and guidelines made thereunder and shortcomings in respect of PIE accounts and financial and other reports and, where appropriate, the imposition of appropriate financial and other penalties and sanctions on officers of PIEs, PIE auditors and PIE audit firms and on PIEs themselves;
- (e) inspection and review, on a programmed basis, of the regulatory and disciplinary functions and processes of the Institute, to satisfy the Board that all such functions and processes are conducted in compliance with international best practice and are well managed and effective and that the requirements for continuing professional development and related post-qualifying education, training and other services provided by the institute develop the profession, promote and enforce the highest standards of professional conduct among members and offer them appropriate support and guidance in all relevant areas;
- (f) inspection and review, on a programmed basis, of KASNEB, the Institute and other bodies concerned in the development, provision and quality control of pre-qualifying education and examination of students of accountancy and their pre-qualifying practical training, to ensure that the curricula and syllabuses conform to standards, guidelines and other pronouncements of the International Accounting Education Standards Board and any successor body thereof and are relevant and appropriate to the needs of the profession; and that providers of such education and training maintain consistently high standards and that students are fairly and comprehensively examined and their knowledge and skills effectively tested.
- (g) the certification and registration of PIE auditors and PIE audit firms;
- (h) the registration of PIEs;

- (i) the performance of all such other acts as may be incidental or conducive to the attainment of the objectives of the Board or the exercise of its powers under this Act.
- (3) The Board shall, in the performance of its functions, inform any entity or individual under its jurisdiction of any shortcomings it has identified and the action required to address such shortcomings and shall inform any such entity or individual and any other interested party of their right to make representations to the Board in relation to such findings and requirements.
- (4) The Board shall, on request, advise the Minister on any aspect of accounting or auditing or the accountancy profession within its purview and shall bring to the attention of the Minister any matter relating directly or indirectly to the performance of its duties or to the profession, which it considers should be brought to his attention in the public interest.
- (5) The Board shall give due publicity to its activities and of proceedings against offenders and of fines, penalties and other sanctions imposed in the disposal of cases, to promote confidence among international and national investors, stakeholders and the public in the reliability, transparency and comparability of financial and other information published by PIEs and the integrity, independence and quality of audits of PIEs
- 14 (1) The Board shall have power to do anything necessary or conducive to the attainment of its objectives and performance of its functions.
- (2) Without prejudice to the generality of Subsection (1) and additional powers specified in this Act, the Board shall have power to -
 - (a) issue such rules, regulations and guidelines, In consultation with the Minister, as may be from time to time required for the purpose of attaining its objectives;
 - (b) Conduct any investigation and take possession of any information or other evidence to assist it in the performance of its functions;
 - (c) collaborate with other regulatory bodies in Kenya with common or similar objectives and enter into co-operative agreements with such bodies;
 - (d) collaborate with, and enter into membership of, regional and international regulatory bodies with common or similar objectives;
 - (e) impose and collect fines and other monetary penalties in accordance with the provisions of this Act;
 - (f) levy such fees and charges and recover such costs as may be approved by the Minister in respect of services and facilities provided and other functions performed by or on behalf of the Board;
- (3) All rules, regulations and guidelines formulated by the Board shall –
 - (a) take into account and be consistent with the objectives of the Board as specified in Section 11 (1) (a);

(b) be exposed for comment by stakeholders and the general public for a period of thirty days through notification in at least two daily newspapers of national circulation and the electronic media; and

(c) be signed by the chairman and chief executive and published in the Gazette.

(4) For the purposes of this Act, stakeholders shall include listed companies and officers thereof and all persons and entities certified or registered by the Board.

15 (1) The Board or any person officially authorized in that behalf by the Board may by notice in writing, require any person to furnish to the Board or to the authorized person, within such period as is specified in the notice, any information specified in the notice.

(2) The Board or any member thereof, or any officer or servant of the Board, shall not disclose to any person or use any information acquired under Subsection (1) except for the purpose of achieving the objectives of the Board unless required to do so by a court of law.

(3) Any person who contravenes the provisions of Subsection (2) commits an offence.

16 (1) The Board may delegate any of its functions under this Act to –

(a) a committee of the Board;

(b) the Institute and any other relevant regulatory organization or recognized self-regulatory organization; or

(c) an authorised person.

(2) A delegation made under this Section shall not prevent the Board from performing the delegated function and may be revoked by the Board at any time.

17 (1) The Board may appoint such committees, panels or other groups (collectively referred to as “committees”) and individuals with special skills and competences as it deems fit to assist the Board in the performance of its functions.

(2) Without prejudice to the generality of Subsection (1) the Board shall appoint committees with appropriate staff support, as follows -

(a) committees to assist the Board in the performance of the functions specified in Section 13 (2) (a) (b) and (c) and related matters;

(b) an investigations committee, under such designation as the Board may deem fit, to collaborate with committees appointed under Subsection 2 (a) and conduct investigations, independently of the Board, into any complaint and allegation against PIEs, officers of PIEs, PIE auditors, PIE firms of auditors and any other person or entity under the jurisdiction of the Board in relation to the provisions of this Act and any rules, regulations and guidelines made thereunder and to make recommendations to the committee appointed under Subsection (2) (c) on its findings;

- (c) an enforcement committee, under such designation as the Board may deem fit, to consider the findings of the committee appointed under Subsection (2) (b) independently of the Board and to make recommendations to the Board on remedial requirements, orders and other enforcement actions to be taken under the provisions of this Act and any rules, regulations and guidelines made thereunder and on the appropriate disposal of cases, including advice on fines, penalties and other sanctions.
- (3) The Board shall decide the composition of committees established under Subsections (1) and (2) with due regard to requirements of necessary skills and competences and independence.
- (4) Any committee or individual appointed under this Section shall be appointed on such terms and conditions as the Board shall deem fit and shall serve during the pleasure of the Board or for fixed terms of office, as the Board shall deem fit.
- (5) Subject to the provisions of this Act and any rules, regulations and guidelines made thereunder or directions by the Board, such committees and individuals appointed under Subsection (1) shall perform their functions and organise their meetings and the transaction of their business in such manner as they shall deem fit.
- (6) Unless the Board appoints a chairman and vice-chairman, the committee shall elect them from among their number.
- (7) Members of committees and individuals appointed under the provisions of this Section shall be subject to the provisions of written laws and other requirements relating to declarations and conflict of interest, conduct, confidentiality and all other relevant rules applicable to members of public bodies and shall be liable to any penalties under the law for any breach thereof.

PART VI – CERTIFICATION AND REGISTRATION OF PIE AUDITORS AND PIE AUDIT FIRMS

18 The Board shall cause to be kept, maintained and kept up to date –

- (a) a register of PIE Auditors, specifying the name and all particulars of the person which the Board considers relevant for inclusion in the Register;
- (b) a register of PIE firms, specifying the name and all particulars of the firm which the Board considers relevant for inclusion in the Register;
- (c) a register of PIEs, specifying the name and all particulars of the PIE which the Board considers relevant for inclusion in the Register; and
- (d) such other register which the Board may consider appropriate for any purpose, specifying such information as the Board may consider relevant for inclusion.

19 (1) Notwithstanding any provision of the Companies Acts or other written law, a person shall not hold any appointment or offer or provide any services as an auditor of a PIE, hereinafter referred to as “a PIE auditor”, or hold himself out to be a PIE auditor, unless he is certified and registered as such by the Board under this Act.

(2) A person who contravenes the provisions of Subsection (1) commits an offence and is liable to a fine not exceeding xxxxxx Shillings for each day on which the offence continues or to imprisonment for a term not exceeding X years or to both.

(3) Any person who is registered as a Fellow or full member of the Institute and is the holder of a current practising certificate issued by the Institute may make an application for certification and registration as a PIE auditor in such form and manner as the Board may from time to time prescribe.

(4) An application under Subsection (2) shall be accompanied by such fees and other information as the Board may from time to time prescribe.

(5) Where, after consideration of an application, the Board is satisfied that the applicant –

- (a) meets the requirements of Subsection (2); and
- (b) is a fit and proper person in accordance with the by-laws and rules of the Institute; and
- (c) is a partner or an employee of a firm that meets the criteria for the time being in force in relation to the certification and registration of audit firms under this Act, authorising them to conduct audits of PIEs (hereinafter referred to as “PIE audit firms”); and
- (d) has the necessary training and practical experience; and
- (e) meets such other requirements as the Board may from time to time prescribe,

the Board shall certify the applicant as a PIE auditor and shall, on payment of such fee as may from time to time be payable, issue to him a certificate to that effect and shall enter his name and all particulars the Board considers relevant in the register of PIE auditors referred to in Section 18 and if the Board is not so satisfied, it shall refuse the application.

(6) A certificate issued under Subsection (5) and related registration shall be valid from the date of issue until 30th June thereafter unless previously surrendered, suspended or cancelled.

20 (1) Notwithstanding any provision of the Companies Acts or other written law, an audit firm shall not offer or provide any audit services to a PIE, or advertise itself or otherwise hold itself out to be a PIE audit firm, unless it is certified and registered as a PIE audit firm by the Board.

(2) A firm which contravenes the provisions of Subsection (1) commits an offence and is liable to a fine not exceeding xxxxxx Shillings for each day on which the offence continues.

(3) An application by a firm for certification and registration as a PIE audit firm shall be in such form and manner as may be prescribed by the Board from time to time and shall be accompanied by such fees and other information as the Board may from time to time prescribe.

(4) When, after consideration of the application, the Board is satisfied that –

- (a) all partners of the firm who are engaged in accounting and auditing are registered with the Institute; and
- (b) all the partners of the firm who provide audit services to PIEs are registered under Section 19 of this Act; and
- (c) the firm meets all other requirements from time to time in force under by-laws rules, regulations and guidelines;

the Board shall certify the firm as a PIE audit firm and shall, on payment of such fee as may from time to time be payable, issue a certificate to that effect to the firm and shall enter its name and all particulars it considers relevant in the register of PIE audit firms referred to in Section 18 and if the Board is not so satisfied, it shall refuse the application.

(5) A certificate issued under Subsection (4) and related registration shall be valid from the date of issue until 30th June thereafter, unless previously surrendered, suspended or cancelled.

21 (1) All applications for renewal of certificates issued in terms of Sections 19 and 20 shall be lodged with the Chief Executive, or such other person as the Board shall from time to time prescribe, in the form and manner for the time being prescribed by the Board, not less than three months before the expiry date of the certificate and the Board shall, if satisfied that the applicant continues to meet the requirements for registration, issue a renewal certificate and renew registration and if the Board is not so satisfied, it shall refuse the application.

(2) Where such application has been timeously lodged and the Board is satisfied that renewal of the certificate is appropriate in terms of Subsection (1) and has not dealt with the renewal application by the date of expiry of the certificate, the registration shall remain in force and the renewal certificate, when issued, shall date from the date of expiry of the previous certificate.

22 (1) The Board shall give written notification to an applicant of its decision to refuse an application or renewal application under this Part of the Act as soon as practicable, but in any event not later than 14 days after that decision and shall give reasons for such refusal.

23 (1) Any change of name or of relevant particulars by a PIE auditor, PIE audit firm or a PIE shall be intimated to the Board in writing within 30 days of such change;

(2) A person who fails to comply with the requirements of Subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding XXXX shillings for each day that the offence continues.

24 The Board may suspend or cancel the certification and registration of a PIE auditor or PIE audit firm and order the name of that person or firm to be removed from the Register, or the Register to be appropriately notated in cases where –

- (a) registration has been obtained by means of wilful misrepresentation or other misleading information;

- (b) the person or firm ceases to meet the requirements for registration contained in this Act;
- (c) registration of the person as a member of the Institute is suspended or cancelled; or
- (d) the person or firm has acted in a way that breaches a provision of this Act;
- (e) the person is convicted of an offence under this Act or of a crime or offence involving dishonesty or of any other crime or offence which, in the opinion of the Board, is likely to bring the profession into disrepute; or
- (f) the person is certified in accordance with the law as being mentally incapacitated to the extent that it would be contrary to the public interest for him to continue in practice.

25 (1) Registration shall be renewed and a certificate shall be issued on expiry of any period of suspension imposed under the provisions of this Act, provided that the person or firm meets the requirements for registration for the time being in force under this Act and the Board shall be entitled to impose such requirements as it deems appropriate as a prerequisite for renewal under this Subsection;

(2) Where registration has been cancelled under Section 21, the Board may, ex proprio motu, or on receipt of an application by a person or firm to that effect in such form and manner and on payment of such fees as may be prescribed, restore registration and issue a certificate if, after making such enquiries as it shall deem fit, if it is satisfied that it is appropriate to do so and the Board shall be entitled to impose such requirements as it deems appropriate as a prerequisite for renewal under this Subsection.

26 (1) An entry in the register shall be prima facie evidence of the matters contained therein.

(2) Without prejudice to the generality of Subsection (1), a certificate purporting to be issued by the chief executive of the Board to the effect that –

- (a) the name and relevant particulars of a person or firm appear in the register shall be prima facie evidence that the person or firm is registered under this Act;
- (b) the name and relevant particulars of a person or firm do not appear in the register shall be prima facie evidence that a person or firm is not registered under this Act;
- (b) the registration of a person or firm has been suspended or cancelled shall be prima facie evidence of that fact;

(3) A copy of any entry in the register or of any other document in the lawful custody of the Board or any extract from the register or from such document ex facie bearing to be certified by the chief executive as a true copy or extract shall be admitted in evidence in all courts without further proof or production of the original.

27 A person who –

- (a) makes any false or misleading statement or conceals a material fact in relation to an application for certification and registration, renewal of certification and registration or restoration of certification and registration or tenders false or misleading documentation in support thereof; or
- (b) fraudulently obtains or attempts to obtain for himself or for another person a certificate under this Act; or
- (c) makes, or causes or permits to be made, any unauthorised entry or alteration or deletion of an entry in the register; or
- (d) alters, defaces or destroys a certificate under this Act without lawful consent; or
- (e) forges, utters as genuine, displays or otherwise makes use of a certificate or other document issued under this Act which he knows to be false;

commits an offence and shall, on conviction, be liable to a fine not exceeding XXXXXXX shillings and to a term of imprisonment not exceeding Y years or to both such fine and imprisonment.

PART VII – DISCIPLINARY AND RELATED PROVISIONS

28 (1) Any person who –

- (a) contravenes any provision of this Act or any requirement imposed under the provision of this Act or any rule or regulation made thereunder; or
- (b) willfully obstructs any member of the Board or an officer or servant of the Board in the performance of his duties under the provisions of that Act, shall be guilty of an offence.

(2) Any person who commits an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding XX million shillings or to imprisonment for a term not exceeding five years or to or to both.

(3) Any firm which commits or is concerned in the commission of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding xx million shillings.

29 (1) In any investigation under this Act, the person or entity under investigation shall be provided with full information of the matter under investigation and of any allegation, complaint or other evidence relating to the matter and of the witnesses who speak to any aspect of the matter, including copies of, or other access to, all available statements and other documentary evidence.

(2) The person or entity under investigation shall be advised of their right to be represented at all times by an advocate or other representative and to be heard either in person or through an advocate at any stage in the investigation.

(3) Without prejudice to other provisions of this Act, where the Board is satisfied that a person or entity, to which the provisions of this Act apply, has contravened any provision of this Act, or any rules or regulation made thereunder, the Board shall exercise its powers and dispose of the case in accordance with the relevant provisions of this Act or as provided for in any such rules and regulations.

30 (1) Without prejudice to the generality of the provisions of Section 31 (4), any person or entity aggrieved by any decision or action of the Board in the exercise of any of its powers and functions under this Act may appeal in writing to the Public Interest Entity Tribunal established under Section 31 of this Act, provided that any such appeal shall be lodged with the Secretary to the Tribunal within 30 days of the decision or action to which the appeal relates.

(2) No disposal of a case by the Board under Section 29 (1) or other provisions of this Act or of any rules, regulations and guidelines made thereunder shall be enforced until the time for lodging an appeal under Subsection (1) has expired or, where the appeal has been commenced, until the appeal has been determined.

31 (1) There is established a tribunal to be known as the Public Interest Entity Tribunal (hereinafter referred to as “the Tribunal” which shall consist of the following members and the Secretary appointed by the Minister –

(a) a chairman who at the time of his appointment shall be an advocate of not less than seven years standing;

(b) one lawyer having at least seven years’ experience in the financial and corporate sector;

(c) one fellow or full member of the Institute who shall have been in practice for a period of not less than seven years;

(d) two persons who have demonstrated competence in the commercial and corporate sector;

(e) the secretary shall be an advocate with at least five years’ experience in corporate law.

(2) All appointments to the Tribunal under Subsection (1) shall be by Notice in the Gazette issued by the Minister and shall be for a period of three years.

(3) The office of a member of the Tribunal shall become vacant -

(a) at the expiration of three years from the date of his appointment;

(b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal;

- (c) if he is removed from membership of the Tribunal by the Minister for failure to attend three consecutive meetings of the Tribunal or is unable to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour; or
- (d) if he resigns the office of a member of the Tribunal.
- (4) The Tribunal shall, upon an appeal made to it in writing by any party or a reference made to it by the Board or by any committee or officer of the Board, on any matter relating to this Act, inquire into the matter and make an award thereon, and every award made shall be notified by the Tribunal to the parties concerned, the Board or any committee or officer thereof, as the case may be, provided that any appeal made under the provisions of Section 30 (1) is timeously made.
- (5) For the purposes of hearing an appeal, the Tribunal shall have all the powers of the High Court to summon witnesses, to take evidence upon oath or affirmation and to call for the production of books and other documents.
- (6) Where the Tribunal considers it desirable for the purposes of avoiding expenses or delay or any other special reasons so to do, it may receive evidence by affidavit and administer interrogatories within the time specified by the Tribunal.
- (7) In its determination of any matter the Tribunal may take into consideration any evidence which it considers relevant to the subject of an appeal before it, notwithstanding that such evidence would not otherwise be admissible under the law relating to evidence.
- (8) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be taxed in accordance with any scale prescribed.
- (9) All summonses, notices or other documents issued under the hand of the chairman of the Tribunal shall be deemed to be issued by the Tribunal.
- (10) Any interested party may be represented before the Tribunal by an advocate or by any other person whom the Tribunal may admit to be heard on behalf of such party.
- (11) The Tribunal shall sit at such times and in such places as it may appoint.
- (12) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.
- (13) Except as expressly provided in this Act or any rules made thereunder, the Tribunal shall regulate its own procedure.
- (14) For the purposes of hearing and determining any cause or matter under this Act, the chairman and two members of the Tribunal shall form a quorum.
- (15) A member of the Tribunal who has an interest in any matter which is the subject of the proceedings of the Tribunal shall not take part in those proceedings.
- (16) Upon any appeal, the Tribunal may –

- (a) confirm, set aside or vary the order or decision in question;
 - (b) remit the proceedings to the Board with such instructions for further consideration, report, proceedings or evidence as the Tribunal may deem fit to give;
 - (c) exercise any of the powers which could have been exercised by the Board or any of its committees in the proceedings in connection with which the appeal is brought; or
 - (d) make such other order, including an order, for costs, as it may deem just.
- (17) The Tribunal shall have power to award the costs of any proceedings before it and to direct that costs shall be paid in accordance with any scale prescribed for suits in the High Court or to award a specific sum as costs.
- (18) Where the Tribunal awards costs in an appeal, it shall, on application by the person to whom the costs are awarded, issue to him a certificate stating the amount of the costs.
- (19) Every certificate issued under Subsection (18) may be filed in the High Court by the person in whose favour the costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.
- (20) The Chief Justice may make rules governing the making of appeals and providing for the fees to be paid, the scale of costs of any such appeal, the procedure to be followed therein, and the manner of notifying the parties thereto; and until such rules are made, and subject thereto, the provisions of the Civil Procedure Act shall apply as if the matter appealed against were a decree of a subordinate court exercising original jurisdiction.
- (21) Any party to proceedings before the Tribunal who is dissatisfied by a decision or order of the Tribunal on a point of law may, within thirty days of the decision or order, appeal against such decision or order to the High Court.
- (22) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or where the appeal has been commenced until the appeal has been determined.
- (23) Upon the hearing of an appeal under this Section, the High Court may -
- (a) confirm, set aside or vary the decision or order in question;
 - (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
 - (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
 - (d) make such other order as it may deem just, including an order as to costs of the appeal of earlier proceedings in the matter before the Tribunal.

(24) There shall be paid to the chairman, secretary and the members of the Tribunal, such remuneration and allowances as the Minister shall, from time to time, determine.

(25) All expenses of the Public Interest Entity Tribunal shall be charged to the general fund of the Board.

PART VII –COMPLIANCE AND MONITORING OF PIEs

32 (1) A PIE shall ensure that its accounts and financial and other reports, including annual reports and directors' reports comply with –

- (a) the requirements of any applicable enactment; and
- (b) all relevant financial reporting standards and requirements.

(2) The Board or any officer authorised in writing shall have access on demand to any such report and financial information prepared by a PIE to enable it to carry out its functions and achieve its objectives under this Act.

(3) A public interest entity shall file a copy of its accounts and financial and other reports with the Board in such manner as may be required in rules made under this Act.

(3) The Board and any officer authorised in writing may seek further information or clarification on any such accounts and financial and other reports from any officer of a PIE or the PIE auditor or PIE audit firm responsible for the audit thereof or from any other person.

(4) Where the Board is satisfied that a PIE has failed to comply with any relevant financial reporting standard or requirement under this or any other applicable enactment, the Board may issue a warning to that entity or may serve a written notice on the PIE requiring it to revise or restate its accounts and financial and other reports and resubmit them to the appropriate regulatory authority within a specified period;

(5) A PIE that fails to comply with a notice under Subsection (4) shall be liable to a fine not exceeding **XXXXXX** shillings imposed by the Board and the Board shall refer the matter to the relevant regulatory authority for such action as it shall deem fit.

(6) In the event that the Board finds that an officer of a PIE has wilfully failed to comply with the provisions of Subsection (1) or with an order under Subsection (4) or was responsible for a serious misstatement in the accounts or financial or other report of the, the Board may –

- (a) impose a fine not exceeding **xxxxxxxx** shillings on that officer; or
- (b) suspend or disqualify that officer from serving as an officer of that or any other public interest entity; and
- (c) refer the matter to any other relevant regulatory authority for such action as it shall deem fit.

PART VIII – PROVISIONS RELATING TO PRACTISING PIE AUDITORS AND FIRMS

- 33 (1) PIE auditors and PIE audit firms shall ensure that every audit they conduct and any other audit or assurance service they provide is carried out in compliance with all relevant standards, codes, guidelines and other pronouncements, and in accordance with the highest standards of professional integrity and without prejudice to the foregoing generality –
- (a) shall not engage in any audit or other work that is likely to impair the independence or the appearance of independence of such auditor or firm or otherwise bring the profession into disrepute; and
 - (b) shall, in the event of possible conflict of interest in relation to any entity which has engaged such auditor or audit firm, withdraw from the engagement.
- (2) Any PIE auditor or PIE audit firm shall immediately advise the Board of any material misstatement of other irregularity identified in the course of an audit of a PIE, to enable investigations to be made and appropriate action to be taken in the public interest.
- 34 (1) The Board and any officer or any regulatory entity including the Institute and any other entity with responsibility for audit regulation in another country may, if authorised by the Board in writing, review the practice of a PIE auditor and, for that purpose, may –
- (a) Inspect any relevant books, audit working papers and files, documents and records, whether in hard copy or electronic form, in the possession or under the control of the PIE auditor, his partner, employee or associated person and may make copies of, or take any abstract or extract from, such books, documents and records and create hard copy of any of such books, documents and records;
 - (b) Review any accounts, financial statements and reports audited by the PIE auditor; and
 - (c) Seek information or clarification regarding any matter relevant to such review from the PIE auditor or his partner, employee or associated person.
- (2) Every PIE auditor and every partner, employee or person associated with that PIE auditor shall, at the request of the Board or officer or other person or entity authorised by the Board in writing under Subsection (1), produce for the purposes of any such review any relevant books, audit working papers and files, documents and records, whether in hard copy or electronic form, in his possession or under the control.
- (3) A PIE auditor or his partner, employee or other person associated with that PIE auditor who, without reasonable cause, fails or refuses to produce or conceals any item requested under the provisions of Subsection (2) commits an offence and is liable to a fine not exceeding XXXXXX shillings or to imprisonment for a term not exceeding xxx or to both.
- 35 (1) Subject to the provisions of this Act and of any rules, regulations and guidelines regarding penalties, where the Board is satisfied that a PIE auditor or PIE audit firm has contravened a provision of this Act or of rules or regulations made thereunder, the Board may –

- (a) impose an admonition, caution or reprimand;
- (b) subject to the provisions of this Act, order payment of a fine of such amount as the disciplinary tribunal may determine;
- (c) suspend for a specified period registration under this Act;
- (d) cancel registration under this Act and order that the name of the PIE auditor or PIE audit firm be removed from the register;
- (e) impose such conditions and requirements on the PIE auditor or PIE firm as it considers appropriate; and
- (f) award costs as it considers appropriate;

and the Board shall provide the Institute with details of any such sanction.

(2) In the event of any PIE auditor or PIE audit firm disregarding or otherwise failing to comply with a disposal made under Subsection (1) or in relation to any other breach or other offence under this Act, the Board shall, after giving reasonable notice to the defendant, be entitled to take further action against him in respect of such disregard or failure to comply.

PART IX - OVERSIGHT OF THE INSTITUTE AND KASNEB

36 (1) The Board shall ensure that the Institute fulfils its regulatory, disciplinary and associated public interest duties and functions under this Act, the Accountants Act and other written laws and any relevant rules and regulations made thereunder and that it complies with the Statements of Membership Obligations and other conditions of membership published from time to time by the International Federation of Accountants.

(2) The Institute shall, within six months of the end of each financial year, submit an annual written report to the Board giving full information on its regulatory and disciplinary activities during the previous year and containing a self-assessment of its achievements against performance targets and key performance indicators, along with details of its planned programme for the current year. Regulatory activities shall include, but shall not be limited to –

- (a) maintenance of the highest standards of professional and business conduct;
- (b) promotion and enforcement of compliance with all relevant standards, codes, guidelines and other pronouncements published by the Institute;
- (c) enforcement of all conditions and other requirements of membership of the Institute by means of balanced and effective practice review and related supervisory processes and appropriate and timeous deployment of the Institute's investigative and disciplinary processes;
- (d) development of the profession by means of a programme of mandatory continuing professional development for members delivered by the Institute or under its direction and supervision ;
- (e) support of members through the provision of technical, ethical and other advisory services.

- (3) The Board shall have oversight of KASNEB in relation to the scope and content of curricula and syllabuses for the accountancy profession and the quality of examination processes, to ensure that pre-qualifying education and training and related examinations reflect international best practice and meet the needs of the accountants, auditors and users of their services.
- (4) The Board shall advise the Institute and KASNEB of any identified shortcomings and shall collaborate with them in addressing these. Without prejudice to the foregoing generality, the Board shall have power to recommend and, if necessary, to require the Institute and KASNEB to take specified action to address any such shortcomings.
- (5) If the Board finds that the Institute or KASNEB is failing in any material way to implement its statutory duties, it shall have power -
- (a) to issue directions; or
 - (b) with the approval of the Minister, to assume responsibility for some or all of the functions of the entity concerned and recover related costs from that entity.

PART X - FINANCIAL PROVISIONS AND REPORTING REQUIREMENTS

37. (1) The Board shall have its own general fund.
- (2) There shall be paid into the general fund -
- (a) all such sums of money as may be paid as fees under this Act; and
 - (b) all such sums of money as may be received by the Board for its operations from any other source approved by the Minister.
- (3) There shall be paid out of the fund all such sums of money required to defray the expenditure incurred by the Board in the exercise, discharge and performance of its objectives, functions and duties.
38. The financial year of the Board shall be the period of twelve months commencing on the first day of July in each year.
39. The Board shall cause proper books of accounts to be kept of its income and expenditures, assets and liabilities and all other transactions of the Board.
- 40 (1) The Minister may, in consultation with the Board, make regulations in respect of the sources of funding or fees payable to the Board.
- (2) The Minister may, from time to time, direct the Board to furnish, in such form as he may require, returns, accounts and any other information with respect to the work of the Board and the Board shall comply with such direction.
- (3) The Board shall, within six months after the close of each financial year, submit to the Minister a report of its operations and activities throughout the year together with audited accounts in such form and detail as the Minister shall, from time to time, determine.
- (4) The Minister shall table the report submitted under Subsection (3) to Parliament within three months of its submission.

PART XI – MISCELLANEOUS PROVISIONS

- 41 Where there is a conflict between the provisions of this Act and the provisions of any other written law with regard to the powers or functions of the Board under this Act, the provisions of this Act shall prevail.
- 42 The Attorney-General may, on the request of the Board, appoint any officer of the Board or advocate of the High Court to be a public prosecutor for the purposes of offences under the provisions of this Act.
- 43 The provisions of the State Corporations Act shall not apply to the Board.

PART XII – TRANSITIONAL PROVISIONS

- 44 The members of the Financial Reporting Oversight Board established under this Act shall be appointed not more than six months after the date of commencement of this Act and the chief executive of the Board shall be appointed not more than three months after the last date of appointment of such members.
- 45 The members and secretary of Public Interest Entity Tribunal shall be appointed within six months following the date of commencement of this Act.
- 46 The terms of office of initial appointees to the Board and to the Tribunal and of any replacements during the initial terms of office prescribed under this Act shall be varied as the President, on the advice of the Minister, and the Minister shall decide, to establish continuity.
- 47 All auditors and audit firms conducting audits of PIEs, as defined in Section 3, as at the date of commencement of this Act shall be deemed to be certified and registered as PIE auditors and PIE audit firms respectively and their names and relevant particulars shall be entered in the Register as soon as practicable following the appointment of the chief executive of the Board in terms of Section 10(1).