

GOVERNMENT OF ZAMBIA

ACT

No. 13 of 2008

Date of Assent: 24th September, 2008

An Act to regulate the accountancy profession; continue the existence of the Zambia Institute of Chartered Accountants and re-define its functions and powers; provide for the regulation of the education and training of accountants; provide for the setting of ethical, auditing and accounting standards; provide for the making and investigation of disclosures made in the public interest; define professional misconduct and provide for disciplinary procedures for the accountancy profession; repeal and replace the Accountants Act, 1982; and provide for matters connected with or incidental to the foregoing.

[26th september, 2008

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Accountants Act, 2008. Short title
2. In this Act, unless the context otherwise requires— Interpretation
 - “accountant” means a person qualified in the theory and practice of accountancy, an auditor, tax consultant and tax adviser and registered under this Act and “accountancy” shall be construed accordingly;
 - “Accountant-General” means the person appointed as Accountant-General under the Public Finance Act, 2004; Act No. 15 of 2004
 - “accounting pronouncements” means the standards, practice, statements, guidelines and circulars developed, adopted or issued by the Institute which a registered accountant should comply with;

- “Affiliate” means a person registered as a Licentiate or a Technician under the provisions of the constitution of the Institute;
- “Associate” means a person registered as such under the provisions of the constitution of the Institute;
- “audit” means the independent examination of evidence from which the financial statements of an enterprise are derived in order to give the reader of the statements confidence as to the truth and fairness of the state of affairs which the financial statements disclose, but does not include book-keeping, cost accounting and business or cost systems;
- “auditing pronouncements” means the standards, practice, statements, guidelines and circulars developed, adopted or issued by the Institute which a registered auditor should comply with in the performance of an audit;
- “auditor” means a person holding a practising certificate or a firm registered under this Act and appointed to perform any auditing functions;
- “Chairperson” means the person appointed Chairperson of the Disciplinary Committee under section *seventy-four*;
- “chartered accountant” means a person holding an associateship or fellowship grade of membership of the Institute and registered as an accountant under section *fifteen*;
- “client” means the person for whom a chartered accountant or the firm of the chartered accountant has performed the duties concerned;
- “Code of Ethics” means the code of professional conduct adopted or published by the Institute;
- “conduct” includes an act or omission;
- “constitution” means the constitution of the Institute adopted in accordance with section *six*;
- “corrupt” has the meaning assigned to it under the Anti-Corruption Commission Act;
- “Council” means the Council of the Institute constituted under section *nine*;

THE ACCOUNTANTS ACT, 2008

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FIRST SCHEDULE

SECOND SCHEDULE

“Disciplinary Committee” means the Disciplinary Committee of the Institute constituted under section *seventy-four*;

“disciplinary offence” means conduct that constitutes grounds for disciplinary action, in respect of a public officer, under the General Orders or the officer’s contract of employment, or in relation to a Member or any other person, under the Member’s or person’s contract of employment or conditions of service;

“disclosable conduct” in relation to any person, Member or a public officer, means—

(a) conduct of the person, whether or not a public officer or Member, that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial performance of official functions by the person, Member, public officer or agency;

(b) conduct of the public officer or Member which amounts to the performance of any of the public officer’s or Member’s functions dishonestly or with partiality;

(c) conduct of a Member, the public officer, a former public officer or an agency that amounts to a breach of public trust;

(d) conduct of the Member, public officer, a former public officer or an agency that amounts to the misuse of information or material acquired in the course of the performance of the functions, whether for the benefit of that Member, person or agency or otherwise;

(e) conduct of the Member or public officer that amounts to maladministration which is action or inaction of a serious nature that is—

(i) contrary to any law;

(ii) unreasonable, unjust, oppressive or improperly discriminatory; or

(iii) based wholly or partly on improper motives;

(f) conduct of the Member, person or public officer that would, if proven, constitute—

- (i) a criminal offence;
- (ii) a disciplinary offence;
- (iii) serious and substantial public wastage or abuse of financial or other public resources or assets; or
- (iv) reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of the Member, person or public officer who is engaged in it; or

(g) a conspiracy or attempt to engage in conduct referred to in paragraphs (a) to (f) inclusive;

“ disclosure ” means communication or release of information made by a Member, regarding any disclosable conduct of any person or an employer, or an employee of that employer, that the Member believes on reasonable grounds shows or tends to show one or more of the following:

- (a) that the person has engaged, is engaging, or proposes to engage, in disclosable conduct;
- (b) public wastage or material financial loss to an entity or to a partner, Member, shareholder or creditor of the entity;
- (c) conduct involving substantial risk or danger to the environment;
- (d) that the person or employer has engaged, is engaging, or proposes to engage, in an unlawful reprisal;
- (e) that a person has engaged, is engaging, or proposes to engage, in conduct that amounts to a substantial and specific danger to the health or safety of the public;
- (f) that a criminal offence has been committed, is being committed or is likely to be committed;
- (g) that the person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (h) that a miscarriage of justice has occurred, is occurring or is likely to occur; or

(i) that any matter referred to in paragraphs (a) to (h) has been, is being or is likely to be deliberately concealed;

“ employer ” means any person—

(a) who employs or provides work for another person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or

(b) who permits any other person in any manner to assist in the carrying on or conducting of the person’s business, including any person acting on behalf of or on the authority of such employer;

“exercise” of a function includes, where the function is a duty, the performance of the duty;

“ Fellow ” means a person registered as such under the provisions of the constitution of the Institute;

“function” includes power, authority or duty;

“ government agency ” means—

(a) a Government department, Ministry or institution;

(b) a statutory body, local authority, organization or agency established under any law;

(c) a body, organ or institution incorporated under any law or established by Government for any public purpose;

(d) a body, organ or institution owned by Government or in which Government has any interest or is under Government control; or

(e) any other functionary or institution—

(i) exercising a power or performing a duty in terms of the Constitution or any other law; or

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(ii) exercising a public power or performing a public function in terms of any law;

“ immigration officer ” has the meaning assigned to it under the Immigration and Deportation Act;

Cap. 123

- “impropriety” means any conduct which falls within any of the categories referred to in paragraphs (a) to (g) of the definition of “disclosable conduct”, irrespective of whether or not—
- (a) the impropriety occurs or occurred in the Republic of Zambia or elsewhere; or
 - (b) the law applying to the impropriety is that of the Republic of Zambia or of another country;
- “Institute” means the Zambia Institute of Chartered Accountants established under the repealed Act;
- Cap. 390 “investigate” includes inquire and audit;
- “investigation Act” means—
- (a) in relation to the Auditor General, the Constitution;
 - Cap. 1 (b) in relation to the Investigator-General, the Commission for Investigations Act;
 - Cap. 39 (c) the Public Finance Act, 2004;
 - Act No. 15 of 2004 (d) the Zambia Police Act;
 - Cap. 107 (e) the Narcotics, Drugs and Psychotropic Substances Act;
 - Cap. 96 (f) the Judicial (Code of Conduct) Act, 1999;
 - Act No. 13 of 1999 and
 - (g) the Anti-Corruption Commission Act;
 - Cap. 91
- “investigating authority” means—
- (a) Auditor-General;
 - (b) the Anti-Corruption Commission;
 - (c) the Drug Enforcement Commission;
 - (d) the Investigator-General;
 - (e) the Inspector-General of Police;
 - (f) the Police Public Complaints Authority; and
 - (g) the Judicial Complaints Authority;
- “legal practitioner” has the meaning assigned to it in the Legal Practitioners Act;
- Cap. 30
- “local authority” means any municipal, district or city council established under the Local Government Act;
- Cap. 281

“maladministration” means any conduct that involves action or inaction of a serious nature that is—

- (a) contrary to the law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) based wholly or partly on improper motives;

“Member ” means a person registered as a Member of the Institute in accordance with the provisions of the constitution of the Institute;

“ non-audit functions ” means any accountancy function performed by a chartered accountant where a statutory audit opinion is not issued but for which the accountant receives payment for the services rendered and which payment does not qualify to be treated as audit fees;

“ non-audit practising certificate ” means a certificate issued under section *nineteen*;

“ occupational detriment ” in relation to the working environment of a Member means the Member—

- (a) being dismissed, suspended, demoted or subjected to any disciplinary action;
- (b) being harassed or intimidated or caused to suffer any injury; damage or loss;
- (c) being transferred against the Member’s will;
- (d) subject to the availability of a vacancy, being refused a transfer or promotion despite having met or exceeded the performance appraisal target;
- (e) being subjected to a term or condition of employment or retirement which is altered or kept altered to the Member’s disadvantage;
- (f) being refused a reference or being provided with a false or adverse reference, by the employer;
- (g) being threatened with any of the actions referred to in paragraphs (a) to (f); or
- (h) being otherwise adversely treated or affected, discriminated against, disadvantaged or prejudiced in respect of employment, career, trade, business, profession or office, including employment opportunities and work security;

“ practice ” means—

(a) accepting an appointment to provide accountancy services;

(b) signing or producing a report or certificate on an accountancy report concerning any person, whether an individual, sole trader, unincorporated body, or firm, or concerning the report or certificate by any person's affairs, in circumstances where reliance by another person (the third party) or doing any other thing which may lead the third party to believe that the accountancy work of the person have been prepared, approved or reviewed by a practitioner;

“ practice standard ” means accounting, auditing and ethical standards;

“ practicing certificate ” means a practising certificate issued under section *nineteen*;

“ President ” means the person elected President of the Institute in accordance with the provisions of the constitution of the Institute;

“ professional body ” means a body of, or representing accountants;

“ professional misconduct ” has the meaning assigned to it under section *seventy-two*;

“ public officer ” means—

(a) an employee of a government agency, including an agency head;

(b) a person employed by or on behalf of a government agency or in the service of an investigating authority, whether under a contract of service or a contract for services, or a person who has ceased to perform those services; or

(c) a person otherwise authorised to perform functions on behalf of a government agency or an investigating authority;

public practice ” means the practice of a chartered accountant who places accountancy services at the disposal of the public for reward;

“ public wastage ” means conduct by a public officer or Member that amounts to negligent, incompetent or inefficient management within, or of, an agency resulting, or likely to result, directly or indirectly, in a substantial waste of public funds or resources;

“ Register ” means the Register of Chartered Accountants in Zambia or the Register of Members, as the case may be, prepared and maintained in accordance with section *twenty-six*;

“ repealed Act ” means the Accountants Act, 1982; Cap. 390

“ Secretary ” means the person appointed Secretary to the Institute under paragraph *four* of the First Schedule to this Act;

“ statutory regulator ” in relation to an entity regulated by law, means the regulator established in respect of the entity by or under that law;

“ third party ” means any other person, other than the client, or a member of a client which is a company or which is any other juristic person;

“ unlawful reprisal ” means conduct that causes, or threatens to cause, detriment—

(a) to a Member directly because the Member has made, or may make, a disclosure; or

(b) to a Member directly because the Member has resisted attempts by another Member to involve the Member in the commission of an offence;

“ Vice-Chairperson ” means the person appointed Vice-Chairperson of the Disciplinary Committee under section *seventy-four*; and

“ Vice-President ” means the person elected Vice-President of the Institute in accordance with the provisions of the constitution of the Institute.

PART II

THE ZAMBIA INSTITUTE OF CHARTERED ACCOUNTANTS

3. (1) The Zambia Institute of Chartered Accountants established under the repealed Act shall continue to exist as if established under this Act.

Continuation of
Institute
Cap. 390

(2) The provisions of the First Schedule apply to the Institute.

Seal of Institute

4. (1) The seal of the Institute shall be such device as may be determined by the Council and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the President or the Vice-President and the Secretary, or one other person authorised in that behalf by a resolution of the Council.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed without seal on behalf of the Institute by the Secretary or any other person generally or specifically authorised in that behalf by the Institute.

(4) Any document purporting to be under the seal of the Institute or issued on behalf of the Institute shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Powers and
functions
of Institute

5. (1) The functions of the Institute are to do all such acts and things as are necessary to foster the advancement of the accountancy profession.

(2) Without prejudice to the generality of subsection (1), the Institute shall—

(a) regulate and govern the conduct of its members in the practice of their business and profession;

(b) maintain appropriate practice standards among Members that are consistent with the principle of self-regulation and the public interest;

(c) represent, co-ordinate and develop the accountancy profession and promote its interests;

(d) develop, promote, maintain and improve appropriate standards of qualification in the accountancy profession;

(e) accredit local and foreign institutes and qualifications;

(f) promote the integrity and enhance the status of the accountancy profession including the declaration of any particular business practice to be undesirable for all or a particular category of accountants;

(g) develop, promote and enforce internationally comparable practice standards in Zambia;

(h) register persons intending to study accountancy and regulate standards of training and practice of Members including the holding of examinations and

tests that are necessary to qualify applicants for membership of the Institute;

- (i) participate in the activities of bodies whose main purpose is the development and setting of practice standards;
- (j) encourage and finance research into any matter affecting the accountancy profession;
- (k) protect and assist the public in all matters relating to the practice of accountancy;
- (l) advise the Government on matters relating to the economic development of Zambia;
- (m) represent, protect and assist accountants with regard to their conditions of practice, remuneration or otherwise; and
- (n) do all such things connected with or incidental to the foregoing.

(3) The Institute may—

- (a) determine and levy fees payable by professional bodies and its Members that the Institute considers necessary to finance its activities under this Act;
- (b) determine the fees payable for an inspection and review conducted for the purposes of this Act;
- (c) determine fees for the accreditation of local and foreign institutes and qualifications; and
- (d) determine what portion of any fee is payable in respect of any part of a year and the date on which the fee or portion thereof is payable.

6. (1) The Institute shall, by a vote of at least two-thirds of the chartered accountants voting at a general meeting of the Institute, adopt a constitution of the Institute and may, in like manner, amend it.

Constitution
of
Institute

(2) The constitution referred to under subsection (1) shall, subject to the other provisions of this Act, regulate the conduct of the affairs of the Institute.

(3) Subject to subsection (2), the constitution may provide for the following matters:

- (a) the meetings of the Institute, including the delivery and sufficiency of notices of the meetings, the quorum, voting, adjournments and other matters of procedure or conduct of the meetings;

- (b) the election, qualifications and tenure of the President and Vice-President of the Institute;
- (c) the composition, functions, powers and procedures of the committees of the Institute;
- (d) the establishment, powers and functions of the branches of the Institute; and
- (e) the classes of Membership and their rights, privileges and obligations.

President and
Vice-
President of
Institute

7. The chartered accountants shall elect the President and Vice-President of the Institute in accordance with the provisions of the constitution of the Institute.

Meetings of
Institute

8. (1) Subject to the other provisions of this Act, the Institute may regulate its own procedure.

(2) There shall preside at any meeting of the Institute—

(a) the President, or in the absence of the President, the Vice-President; or

(b) in the absence of the President and the Vice-President, such Member as the members present may elect for the purpose of the meeting.

(3) The Institute shall hold an annual general meeting in accordance with the provisions of the constitution of the Institute.

(4) The Institute may call a special general meeting upon giving such notice as may be prescribed in its constitution.

(5) Notwithstanding subsection (4), ten percent or more of the chartered accountants may call for a special general meeting upon giving of a shorter notice in writing, signed by the chartered accountants.

(6) The validity of any proceedings, act or decision of the Institute shall not be affected by any person's absence from any meeting of the Institute or by reason that a person not entitled to do so took part in the proceedings.

PART III

THE COUNCIL OF THE INSTITUTE

Council of
Institute

9. (1) For the proper management of the affairs of the Institute, there is hereby constituted the Council of the Institute.

(2) The Council shall consist of the following members:

- (a) the President;
- (b) the Vice-President;
- (c) four chartered accountants from the commercial and industrial sector elected by the chartered accountants at an annual general meeting of the Institute;
- (d) four chartered accountants from public practice elected by the chartered accountants at an annual general meeting of the Institute; and
- (e) the Accountant-General as ex-officio member.

(3) The President and Vice-President of the Institute shall be the Chairperson and Vice-Chairperson respectively of the Council.

(4) A chartered accountant shall not be qualified to be elected or appointed as a Council member under subsection (1), if the chartered accountant—

- (a) has committed any professional misconduct within a period of five years preceding the election or appointment;
- (b) is in lawful custody or the chartered accountant's freedom of movement is restricted under any law in force in or outside Zambia on the date of the election or appointment; or
- (c) has not been on the register for at least three years preceding the election or appointment.

(5) The provisions of the First Schedule apply to the Council.

10. (1) The functions of the Council are to—

- (a) perform the functions of the Institute;
- (b) promote an understanding of professional ethics amongst the members of the Institute;
- (c) ensure that the rules and guidelines for professional ethics developed by the Institute are responsive to the expectations of business and financial institutions and those who rely on accountancy work;
- (d) participate in the development of international practice standard setting;
- (e) determine the need for, and the nature and level of, professional indemnity insurance or fidelity insurance to be carried out by chartered accountants;

Functions of
Council

- (f) make recommendations affecting or relating to the accountancy profession to the general meeting of the Institute;
- (g) issue and ensure the relevance of auditing and accounting pronouncements by—
 - (i) considering the needs of users of audit and accountant's reports;
 - (ii) liaising with any committee of the Institute for purposes of setting standards to be maintained by chartered accountants and to receive feedback on areas where auditing and accounting pronouncements are needed;
 - (iii) implementing appropriate international practice standards; and
 - (iv) consulting with professional bodies on the direction and appropriateness of practice standards pronouncements; and
- (h) set papers and qualifying examinations for all persons with foreign accountancy professional qualifications intending to practice in Zambia;
- (i) register all persons studying or intending to study accountancy or become accountants; and
- (j) do all such things and acts as the Institute or Council may do under this Act.

PART IV

MEMBERSHIP, REGISTRATION AND PRACTISING CERTIFICATES

Classes of
Members

11. (1) There shall be such classes of Members as shall be provided for in the constitution of the Institute.

(2) Each class of Membership shall have such rights, privileges and obligations as may be prescribed in the constitution of the Institute.

(3) A person may apply to the Institute for registration as a Member in accordance with the provisions of the constitution of the Institute.

Application for
registration as
accountant

12. (1) A person who intends to be employed or to practice as an accountant in Zambia shall apply to the Institute for registration in the prescribed manner and form upon payment of the prescribed fee.

(2) The Institute shall register an applicant as an accountant where the Institute is satisfied that—

- (a) subject to subsection (2) of section *eleven*, the applicant is an Affiliate, Associate or Fellow of a body approved by the Institute;
- (b) the applicant has passed an examination of the Institute;
- (c) if the applicant has a foreign qualification, the applicant should undertake such number of courses prescribed by the Institute; and
- (d) the applicant is of good character and is not disqualified for registration under this Act.

(3) The Institute may register a person as an accountant under this Act if the person is not a citizen of Zambia or is not practising or working as an accountant in Zambia prior to the application if that person—

- (a) is engaged to work as an accountant in Zambia under an international agreement entered into by the Government of the Republic of Zambia; or
- (b) undertakes such number of courses prescribed under the relevant laws of Zambia as the Institute may determine and passes the final examination set by the Institute for the courses.

(4) Notwithstanding anything to the contrary in the Immigration and Deportation Act, an immigration officer shall not, without the approval of the Institute, issue an employment or entry permit to a person who intends to practice, or be employed, as an accountant in Zambia.

Cap. 123

(5) A person who contravenes subsection (4) commits an offence and is liable, upon conviction to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

13. The Minister may, on the recommendation of the Institute, by statutory instrument, recognise any local and foreign qualifications accredited by the Institute for purposes of registration under this Act.

Recognition of
foreign
qualifications

14. (1) A person shall not qualify for registration as an accountant under this Act or a Member under the constitution of the Institute, if the person—

Disqualification
from
registration
Cap. 388

- (a) has been convicted of an offence involving dishonesty;

- (b) has been declared to be of unsound mind under any law in force in Zambia;
- (c) is an undischarged bankrupt;
- (d) has been found by the Disciplinary Committee to be guilty of professional misconduct; or
- (e) is a company registered under the Companies Act.
- Cap.388
- Certificate of registration
15. (1) The Institute shall issue a person registered under the constitution of the Institute as a Member with a certificate of registration as a Member showing the person's class of membership.
- (2) The Institute shall issue a registered chartered accountant with a certificate of registration showing the chartered accountant's class of membership.
- (3) A certificate of registration shall remain the property of the Institute.
- Membership and client fees
16. (1) The Institute may charge such fees for its membership as may be prescribed and different fees may be prescribed for different classes of membership.
- (2) A member shall charge such client service fees as may be determined by the Institute.
- Cancellation of registration
17. (1) The Institute shall cancel the registration of a chartered accountant or Member where—
- (a) the Institute has reasonable grounds to believe that the registration was obtained through fraud, misrepresentation or concealment of any material fact;
- (b) the chartered accountant or Member is found guilty of professional misconduct under this Act or the Code of Ethics;
- (c) the chartered accountant or Member is convicted of an offence involving dishonesty; or
- (d) since the registration, circumstances have arisen disqualifying the chartered accountant or Member from registration.
- (2) The Institute shall, before cancelling the registration of a chartered accountant or Member under subsection (1), give the chartered accountant or Member an opportunity to be heard.
- (3) The Institute may, before cancelling the registration of a chartered accountant, suspend the chartered accountant for such period and on such terms and conditions as the Institute may determine.

(4) Where the Institute cancels the registration of a person under this section, the person's name shall be removed from the Register and shall not be restored except on such conditions as may be prescribed by the constitution of the Institute and upon payment of the prescribed fee.

18. (1) A person shall not, unless the person is registered as a chartered accountant under this Act—

Holding out

(a) practice as, be employed as, offer services as, or hold out to be, a chartered accountant;

(b) adopt, use or exhibit the terms "chartered accountant", "registered auditor", "public accountant", "public auditor", "public tax consultant", "public tax adviser" or any other term of like description; or

(c) do anything likely to lead persons to infer that the person is a registered chartered accountant.

(2) A person shall not, unless the person is registered as a Member with the Institute—

(a) practice as, be employed as, offer services as, or hold out to be, a Member, tax consultant or tax advisor;

(b) adopt, use or exhibit the terms "Member" "public tax consultant", "public tax advisor", "receiver", "liquidator" or any other term of like description; or

(c) do anything likely to lead persons to infer that the person is a registered Member.

(3) Nothing in subsection (1) shall prevent a legal practitioner from setting up in practice as a tax advisor or tax consultant, or being a partner in the practice.

(4) A person, firm, company or government agency shall not employ or engage an Affiliate, Fellow, Technician, Licentiate, Associate or any person who is not a member of the Institute or registered under this Act as an accountant.

(5) A person who contravenes subsection (1), (2) or (4) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(6) Where an offence under this section is committed by a body corporate, every director or senior officer of the body corporate shall be liable, upon conviction, as if the director or senior officer had personally committed the offence, unless the

director or senior officer proves to the satisfaction of the court that the act constituting the offence under this section was done without the knowledge, consent or connivance of the director or senior officer or that the director or senior officer took reasonable steps to prevent the commission of the offence.

(7) Where a firm does an act which if done by an individual would be an offence under this section, every partner in the firm shall be deemed to have committed the offence unless the partner proves that the offence was committed without their knowledge, consent or connivance.

Practising
certificate
and non-audit
practising
certificate

19. (1) A chartered accountant shall apply for a practising certificate or a non-audit practising certificate in the prescribed manner and form upon payment of the prescribed fee.

(2) The Institute shall, where an applicant—

(a) has been certified by a professional body or a body recognised under section *thirteen* to have complied with the education and training requirements; and

(b) has passed the competence practice examination set by the Institute and has obtained competence to practice and a period of more than seven years has elapsed between the date of complying with the education and training requirements and the date of the application;

issue the applicant with a practising certificate or a non-audit practising certificate in the prescribed form.

(3) The Institute shall, where it issues a practising certificate or a non-audit practising certificate, enter the name of the chartered accountant in the Register.

Prohibition
of
establishment
of
practice
without
certificate

20. (1) A person shall not set up in practice as a chartered accountant or be a partner in any such practice, unless that person holds a practising certificate or a non-audit practising certificate issued by the Institute under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Display of
certificate

21. A holder of a practising certificate or a non-audit practising certificate shall display the practising certificate or non-audit practising certificate, as the case may be, in a conspicuous place at the place of practice.

Renewal of
certificate

22. (1) A practising certificate or a non-audit practicing certificate shall be renewed annually in the prescribed manner and form upon payment of the prescribed fee.

(2) A practising certificate or a non-audit practising certificate that is not renewed in accordance with subsection (1) is invalid.

(3) A chartered accountant who practices during any period in which the chartered accountant's practising certificate or non-audit practising certificate is invalid commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

23. (1) The Institute shall cancel a practising certificate or a non-audit practising certificate if the holder—

Cancellation
of practising
and non-
audit
practising
certificate

- (a) is found guilty of any professional misconduct;
- (b) is convicted of an offence involving dishonesty;
- (c) is declared to be of unsound mind;
- (d) is an undischarged bankrupt;
- (e) obtained the certificate through fraud, misrepresentation or concealment of a material fact; or
- (f) commits an offence under this Act;

(2) Where the registration of any person is cancelled under this Part, the practising certificate or non-audit practising certificate held by that person shall become void.

(3) The Institute shall, before cancelling the practising certificate or non-audit practising certificate of a chartered accountant under this section, give the chartered accountant an opportunity to be heard.

(4) The Institute may, before cancelling the practising certificate or non-audit practising certificate of a chartered accountant, suspend the chartered accountant for such period and on such terms and conditions as the Institute may determine.

24. (1) A person who registers a firm of accountants under the Registration of Business Names Act shall register the firm with the Institute in the prescribed manner and form upon payment of the prescribed fee.

Registration
of firms
Cap. 389

(2) The Institute shall register a firm of chartered accountants

Cap. 389

by entering in the Register in Zambia, the name of the firm as registered under the Registration of Business Names Act, together with the name of each partner of the firm and any other information as may be prescribed.

(3) A firm of chartered accountants shall notify the Institute of any change in its name, composition, address or other information as may be prescribed, not later than thirty days after the date on which such change takes place.

(4) A chartered accountant shall furnish the following information to a client or a prospective client:

- (a) the firm's name or title under which the chartered accountant practices;
- (b) the place or places of business of the firm in which the chartered accountant is in practice as a partner or employer;
- (c) the full names of all the registered partners; and
- (d) the chartered accountant's nationality, first names or initials, surname and ordinary residential address.

(5) A firm registered under this section shall obtain professional insurance, in the prescribed manner, to cover any liability which may be incurred as a result of the negligence or recklessness in the conduct of the practice by the partners of the firm.

(6) Where a firm obtains professional insurance in accordance with subsection (5), the liability of the partners shall be limited to the extent prescribed.

Registration of
students of
accountancy

25. The Institute shall register students of accountancy in accordance with the provisions of the constitution of the Institute.

Registers

26. (1) The Institute shall maintain a register of chartered accountants, to be referred to as the "Register of Chartered Accountants in Zambia".

(2) The Register referred to under subsection (1) shall contain such particulars and information relating to chartered accountants as the Institute may determine.

(3) The Institute shall maintain a separate register of Members to be called the "Register of Members" which shall contain such particulars and information specified under the constitution of the Institute.

(4) The Institute may cause any corrections or alteration to be made to the Registers in accordance with the purposes of this Act.

(5) The Registers shall be kept at the Institute and shall be open to inspection on such conditions, including the payment of any fee, as may be prescribed.

(6) The Institute shall maintain a register of all persons studying accountancy.

27. (1) A person who—

(a) makes or causes to be made, an unauthorised entry, alteration or erasure in the Registers, certificate of registration, non-audit practising certificate or practising certificate, or in any copy thereof; or

(b) procures or attempts to procure for that person or any other person a practising certificate, a non-audit practising certificate or registration of any matter by means of fraud, misrepresentation or concealment of any material fact;

commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding ten years, or to both.

28. (1) A chartered accountant shall not—

(a) except with the approval of the Institute, employ in connection with the practice of the chartered accountant—

(i) a person who is suspended from practice under any provision of this Act;

(ii) a person who is not registered as a Member or whose name has been removed from the Register or who is disqualified from registration by virtue of a conviction for professional misconduct; or

(iii) a person whose application for registration was rejected by the Institute;

(b) practice under a firm name or title unless on every letterhead bearing the firm name or title there appears a clear indication of every partner who is a chartered accountant;

Offences
regarding
registered
accountants

Offences
relating to
registration, etc

(c) sign an account, statement, report, financial statement submitted for tax purposes or document which purports to represent work performed by the chartered accountant, unless the work was performed by the chartered accountant, or under the personal supervision or direction of the chartered accountant, or by or under the personal supervision or direction of one or more of the partners of the chartered accountant, as the case may be;

(d) engage in practice during any period in respect of which the chartered accountant is suspended from practice; or

(e) practice without carrying the prescribed professional indemnity or fidelity insurance.

(2) Paragraph (d) of subsection (1) does not apply—

(a) in respect of work performed on behalf of a chartered accountant by another chartered accountant;

(b) in respect of work performed by another chartered accountant (“the previous chartered accountant”) in a partially completed assignment which the previous chartered accountant was unable to complete as a result of death, disability or other cause not under the control of the previous chartered accountant, and which assignment the successor chartered accountant is engaged to complete; or

(c) in respect of work performed outside the Republic by a Member of a professional body of accountants outside the Republic whose status, in the opinion of the Institute, is at least equal to that demanded by the Institute for the profession in the Republic.

(3) Nothing in paragraph (d) of subsection (1) prevents a chartered accountant from signing the firm name or title under which the chartered accountant practices.

(4) A person who contravenes or fails to comply with any provision of this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Institute and such agreed procedures as the client contract may specify and such fact shall be disclosed in the audit report.

30. (1) A chartered accountant shall not incur any liability by reason of—

Accountant not
to incur liability
on certain
opinions

- (a) an opinion expressed by the chartered accountant in good faith on an item appearing in the financial statement of an entity in connection with which the audit was carried out; or
- (b) the chartered accountant having declined to express an opinion in respect of the financial statement of an entity;

if the Institute is satisfied that, having regard to the nature of the item or other circumstances, the chartered accountant could not reasonably have been expected to express an authoritative opinion.

(2) A chartered accountant shall not, in respect of any opinion expressed or report or statement made by the chartered accountant in the ordinary course of duties—

- (a) incur any liability to a client of the chartered accountant or any third party, unless it is proved that the opinion was expressed, or the report or statement made, intentionally or pursuant to a negligent performance of duties; and
- (b) where it is proved that the opinion was expressed or the report or statement was made pursuant to a negligent performance of duties, incur any liability to a third party who has relied on the opinion, report or statement, for financial loss suffered as a result of having relied thereon, unless it is proved that the chartered accountant knew or could in the particular circumstances reasonably have been expected to know at the time when the negligence occurred in the performance of the duties pursuant to which the opinion was expressed or the report or statement was made—
 - (i) that the opinion, report or statement would be used by a client to induce the third party to act or refrain from acting in some way or to enter into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person;

(ii) that the third party would rely on the opinion, report or statement for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person; or

(iii) in any way represented, at any time after the opinion was expressed or the report or statement was made to the third party that the opinion, report or statement was correct, while at that time the chartered accountant knew or could in the particular circumstances reasonably have been expected to know that the third party would rely on the representation for the purpose of acting or refraining from acting in some way or of entering into the specific transaction into which the third party entered, or any other transaction of a similar nature, with the client or any other person.

(3) Nothing in this section confers on any person a right of action against a chartered accountant which, but for the provisions of this section, the person would not have had.

(4) For the purpose of paragraph (b) of subsection (2), the fact that a chartered accountant performed the functions of an auditor is not in itself proof that the chartered accountant could reasonably have been expected to know that—

(a) a client would act as contemplated in subparagraph (i) of paragraph (b) of subsection (2); or

(b) the third party would act as contemplated in subparagraph (i) or (ii) of paragraph (b) of subsection (2).

(5) Paragraph (b) of subsection (2) shall not affect—

(a) any liability of a chartered accountant arising from—

(i) a contract between a third party and the chartered accountant; or

(ii) any statutory provision; or

(b) any disclaimer of liability by a chartered accountant or a person referred to in that subsection.

31. (1) The Institute, or any person authorised by it, shall within such period as the Institute may determine, review the practice of a chartered accountant and the firm of the chartered accountant and may inspect and make copies of any book, document or record in the possession or under the control of the chartered accountant.

Practice review

(2) The Institute or the person authorised by it under subsection (1), may recover the costs of the review or inspection of a chartered accountant in terms of this section from the chartered accountant.

(3) A chartered accountant shall, at the request of the Institute, or the person authorised by it, produce a book, document, record or thing and shall not, subject to the provisions of any other law, refuse to produce the book, document, record or thing, even though the chartered accountant is of the opinion that the book, document, record or thing contains confidential information of a client.

(4) A chartered accountant who produces a book, document, record or thing for purposes of an inspection or review under this Act shall not be held liable, criminally or under civil law, as a result of the production of the book, document, record or thing.

(5) A person performing or involved in the performance of any functions under this section shall not disclose any information obtained in the performance of the functions except —

- (a) for the purpose of a disciplinary hearing or an investigation of a protected disclosure under this Act;
- (b) to a person authorised by the Institute and who of necessity requires the information for the performance of functions under this Act;
- (c) where the person of necessity supplies the information in the performance of functions under this Act;
- (d) where required to do so by order of a court of law; or
- (e) at the written request of, and to, a competent authority established by law which requires the information for the institution, or an investigation with a view to the institution, of any criminal prosecution.

(6) A person who—

- (a) contravenes subsection (3) or (5); or

(b) obstructs or hinders any person in the performance of functions under this section;

commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Appeals

32. A person aggrieved by a decision made by or on behalf of the Institute under this Part may, within thirty days of the decision, appeal to the High Court.

PART V

PROTECTED DISCLOSURE

Application

33. (1) This Act applies to any disclosure made after the date on which it comes into operation, irrespective of whether or not the impropriety occurred before or after that date.

(2) For the avoidance of doubt, this Act applies to any government agency or a private or public company, institution, organisation, body or organ registered, established or incorporated under any law.

Void contracts

34. Any provision in a contract of employment or other agreement between an employer and a Member is void in so far as it—

(a) purports to exclude any provision of this Act, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract; or

(b) purports to preclude the Member or has the effect of discouraging the Member, from making a disclosure.

Disclosures during proceedings

35. If information that could amount to a disclosure is disclosed in the course of any proceedings of a court or tribunal, the court or tribunal shall refer the information to an investigating authority.

Other protection preserved

36. This Act does not limit the protection given by any other law to a Member who makes a disclosure or prejudice any other remedy available to the Member under that law.

Relationship of Act and other Acts

37. (1) This Act prevails, to the extent of any inconsistency, over the provisions of any investigation Act.

(2) Notwithstanding subsection (1), nothing in this Part otherwise limits or affects the operation of any Act or the exercise of the functions conferred or imposed on an investigating authority or any other person or body under it.

(3) Nothing in this Part authorises an investigating authority to investigate any complaint that it is not authorised to investigate under the relevant investigation Act.

(4) Nothing in this Part affects the proper administration and management of an investigating authority or public authority, including action that may or is required to be taken in respect of the salary, wages and conditions of employment or discipline of a Member, subject to the following:

- (a) detrimental action shall not be taken against a Member if to do so would be in contravention of this Act; and
- (b) beneficial treatment shall not be given in favour of a Member if the purpose, or one of the purposes for doing so is to influence the Member to make, to refrain from making, or to withdraw, a disclosure.

38. (1) An employer shall not subject any Member to any occupational detriment on account, or partly on account, of the Member having made a disclosure under this Part.

Member not to be subjected to occupational detriment

(2) An employer who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

39. (1) Any Member may make a disclosure to an investigating authority.

Making disclosure

(2) Without limiting the generality of subsection (1), a Member may make a disclosure—

- (a) about any conduct in which a person engaged, or about matters arising, before the commencement of this Act; and
- (b) whether or not the Member is able to identify the person that the information disclosed concerns.

40. (1) A Member may make an anonymous disclosure in accordance with this section and the disclosure is protected by this Act.

Anonymous disclosures

(2) A Member making an anonymous disclosure shall identify themselves to the head of an investigating authority and request that the Member's identity be kept confidential by the investigating authority.

(4) The head of an investigating authority shall personally consider an anonymous disclosure and make a preliminary assessment of the disclosure against the matters referred to under section *forty-one* before referring the matter without any identification of the person making the disclosure, to any relevant Member of staff of the investigating authority for further and full investigation.

(5) An investigating authority shall maintain confidentiality when examining a matter referred in accordance with this section.

(6) An investigating authority shall subject any anonymous disclosure to the tests set out in section *forty-one*.

Frivolous,
vexatious, etc.
disclosures

41. (1) An investigating authority may decline to act on a disclosure received by it where the investigating authority considers that—

- (a) the disclosure is frivolous or vexatious;
- (b) the disclosure is misconceived or lacking in substance;
- (c) the disclosure is trivial;
- (d) there is a more appropriate method of dealing with the disclosure reasonably available; or
- (e) the disclosure has already been dealt with adequately.

(2) An investigating authority shall, where an issue raised in a disclosure has been determined by a court or tribunal authorised to determine the issue at law, after consideration of the matters raised by the disclosure, decline to act on the disclosure to the extent that the disclosure attempts to re-open the issue.

Protected
disclosure

42. (1) A disclosure is a protected disclosure if—

- (a) it is made in good faith by a Member—
 - (i) who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
 - (ii) who does not make the disclosure for purposes of personal gain, excluding any reward payable in terms of any law;
- (b) one or more of the conditions specified in subsection (2) apply; and
- (c) in all the circumstances of the case, it is reasonable to make the disclosure.

(2) The conditions referred to in paragraph (b) of subsection (1) are—

- (a) that at the time of making a disclosure, the Member who makes the disclosure has reason to believe that the Member shall be subjected to an occupational detriment if the Member makes a disclosure to the employer;
- (b) that, in a case where no person or body is prescribed in relation to the relevant impropriety, the Member making the disclosure has reason to believe that it is likely that evidence relating to the impropriety shall be concealed or destroyed if the Member makes the disclosure to the employer or any other person;
- (c) that the Member making the disclosure has previously made a disclosure of substantially the same information to—
 - (i) the employer; or
 - (ii) in the case of another entity, any other person or body;in respect of which no action was taken within a reasonable period after the disclosure; or
- (d) that the impropriety is of an exceptionally serious nature.

(3) In determining for the purposes of paragraph (c) of subsection (1) whether it is reasonable for the Member to make the disclosure, consideration shall be given to—

- (a) the identity of the person to whom the disclosure is made;
- (b) the seriousness of the impropriety;
- (c) whether the impropriety is continuing or is likely to occur in the future;
- (d) whether the disclosure is made in breach of a duty of confidentiality of the employer towards any other person;
- (e) in a case falling within paragraph (c) of subsection (2), any action which the employer or the person or body to whom the disclosure was made, has taken, or might reasonably be expected to have taken, as a result of the previous disclosure;

(f) in a case falling within subparagraph (i) of paragraph (c) of subsection (2), whether in making the disclosure to the employer the Member complied with any procedure which was authorised by the employer; and

(g) the public interest.

(4) For the purposes of this section, a subsequent disclosure may be regarded as a disclosure of substantially the same information referred to in paragraph (c) of subsection (2) where the subsequent disclosure extends to information concerning an action taken or not taken by any person as a result of the previous disclosure.

Disclosures to be made voluntarily

43. (1) To be protected by this Act, a disclosure shall be made voluntarily.

(2) A disclosure is not made voluntarily for the purposes of this section if it is made by a Member in the exercise of a duty imposed on the Member by or under an Act.

(3) A disclosure is made voluntarily for the purposes of this section if it is made by a Member in accordance with a code of conduct, however described, adopted by an investigating authority, a government agency, a company or the Institute and setting out rules or guidelines to be observed by persons or Members for reporting corrupt conduct, maladministration or serious and substantial waste of money by investigating authorities, government agencies or Members.

Disclosure concerning corrupt conduct Cap. 91

44. To be protected by this Act, a disclosure by a Member to the Anti-Corruption Commission shall be made in accordance with the Anti-Corruption Commission Act and be a disclosure of information that shows or tends to show that a person, government agency or a Member has engaged, is engaged or intends to engage in corrupt conduct.

Disclosure to Investigator-General concerning maladministration Cap. 39

45. To be protected by this Act, a disclosure by a Member to the Investigator-General shall—

(a) be made in accordance with the Commission for Investigations Act; and

(b) be a disclosure of information that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on a government agency or a Member, the government agency or Member has engaged, is engaged or intends

to engage in conduct of a kind that amounts to maladministration.

46. To be protected by this Act, a disclosure by a Member to the Auditor-General shall be a disclosure of information that shows or tends to show that a government agency, an authority or officer of an authority or government agency has seriously and substantially wasted public money contrary to the provisions of the Public Finance Act, 2004.

Disclosure to Auditor-General concerning serious and substantial waste

Act No. 15 of 2004

47 To be protected by this Act, a disclosure by a Member to the Police Public Complaints Authority shall—

Disclosure concerning police officer
Cap. 107

(a) be made in accordance with the Zambia Police Act; and

(b) be a disclosure that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a police officer.

48. (1) A disclosure by a Member to the Anti-Corruption Commission that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the Investigator-General, the Investigator-General or an officer of the Investigator-General has engaged, is engaged or intends to engage in conduct that amounts to maladministration is protected by this Act.

Disclosures about investigating authorities

(2) The Anti-Corruption Commission may investigate, and report, in accordance with the Anti-Corruption Commission Act on any matter raised by a disclosure made to it referred to under subsection (1).

Cap. 91

(3) A disclosure by a Member to the Investigator-General or Anti-Corruption Commission that shows or tends to show that the Auditor-General or a Member of the staff of the Auditor-General has seriously and substantially wasted public money is protected by this Act.

(4) The Anti-Corruption Commission may investigate, and report, in accordance with the Anti-Corruption Commission Act on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3).

Cap. 91

(5) A disclosure by a Member to the Anti-Corruption Commission that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the Inspector General of Police, the Inspector General of Police has engaged or intends to engage in conduct

that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.

Cap. 91

(6) The Anti-Corruption Commission may investigate, and report, in accordance with the Anti-Corruption Commission Act on any matter raised by a disclosure made to it that referred to in subsection (6).

(7) A disclosure referred to in this section is protected by this Act only if it satisfies all other applicable requirements of this Part.

Referred disclosures protected

49. (1) A disclosure is protected by this Act if it is made by a Member to an investigating authority and is referred, whether because it is not authorised to investigate the matter under the relevant investigation Act or otherwise, by the investigating authority to another investigating authority or to a government agency.

(2) A disclosure is protected by this Act if it is made by a Member to another Member and is referred by the other Member to an investigating authority or to another Member or government agency.

Disclosures motivated by object of avoiding disciplinary action

50. A disclosure that is made solely or substantially with the motive of avoiding dismissal or other disciplinary action, not being disciplinary action taken in reprisal for the making of a protected disclosure, is not, notwithstanding any other provision of this Part, a protected disclosure.

Disclosure to legal practitioner

51. A disclosure made by a Member to a legal practitioner is a protected disclosure.

Disclosure to employer

52. (1) A disclosure by a Member made in good faith—

(a) and substantially in accordance with any procedure prescribed, or authorized by the Member's employer for reporting or otherwise remedying any impropriety; or

(b) to the employer of the Member, where there is no procedure as contemplated in paragraph (a); is a protected disclosure.

(2) A Member who, in accordance with a procedure authorised by the employer, makes a disclosure to a person other than the employer, is deemed, for the purposes of this Act, to be making the disclosure to the employer.

53. (1) Any disclosure made by a Member in good faith to a person or body prescribed for purposes of this Act and in respect of which a Member reasonably believes that— Disclosure to certain persons or bodies

(a) the relevant impropriety falls within any description of matters which, in the ordinary course are dealt with by the person or body; and

(b) the information disclosed, and any allegation contained in it, are substantially true;

is a protected disclosure.

(2) A person or body referred to in, or prescribed in terms of, subsection (1) who is of the opinion that the matter would be more appropriately dealt with by another person or body referred to in, or prescribed in terms of, that subsection, shall render such assistance to a Member as is necessary to enable the Member to comply with this section.

54. Subject to section *fifty-five*, if a disclosure received by an investigating authority is not related to— Referral without investigation

(a) the conduct of the authority or of a Member in relation to the authority; or

(b) a matter, or the conduct of any person, that it has a function or power to investigate;

the investigating authority shall refer the disclosure to an agency that, because it has a function or power to deal with the conduct or matter that the disclosure concerns, is a proper authority to receive the disclosure.

55. (1) An investigating authority shall investigate a disclosure received by it if the disclosure relates to - Investigation by authority

(a) a matter, or the conduct of any person, that the authority has a function or power to investigate; or

(b) the conduct of a person, other than a Member, performing services for or on behalf of the authority.

(2) Where an investigating authority investigates a matter in accordance with subsection (1) and is not able to investigate the matter impartially or without a conflict of interest, the authority shall refer the matter to another investigating authority.

56. Where an investigating authority decides not to investigate a disclosure received by it, the investigating authority shall refer the matter to the Investigator-General or the Auditor- Non-investigation by authority

General seeking the Investigator-General's or Auditor-General's approval for the investigating authority not to investigate the disclosure.

Referral with investigation

57. (1) Subject to subsection (2), if a disclosure being investigated by an investigating authority relates to—

(a) the conduct of another agency or the conduct of a person in relation to another agency; or

(b) a matter, or the conduct of any person, that another agency has a function or power to investigate;

the investigating authority shall refer the disclosure to the other agency.

(2) Nothing in this section affects the duty of an investigating authority to act under section *fifty-five*.

No referral

58. (1) An investigating authority shall not refer a disclosure to another agency under section *fifty-four* or subsection (1) of section *fifty-seven* if, in the authority's opinion—

(a) there is a serious risk that a person would engage in an unlawful reprisal; or

(b) the proper investigation of the disclosure would be prejudiced;

as a result of the reference to the other agency.

(2) Where a non-referral of the type referred to in subsection (1) occurs, the matter shall be referred immediately to the Investigator-General who shall decide what action is to be taken in relation to the matter.

Action by investigation authority

59. If, after investigation, an investigating authority is of the opinion that a disclosure has revealed—

(a) that a person, Member or public officer has engaged, is engaging, or intends to engage, in disclosable conduct;

(b) public wastage;

(c) that a person has engaged, is engaging, or intends to engage, in an unlawful reprisal; or

(d) that a person, Member or public officer has engaged, is engaging, or intends to engage, in conduct that amounts to a substantial and specific danger to the health or safety of the public;

the investigating authority shall take such action as is necessary and reasonable to—

- (a) prevent the conduct or reprisal continuing or occurring in future;
- (b) discipline any person responsible for the conduct or reprisal;
- (c) bring an action in court or prosecute any person responsible for the conduct or reprisal, under this Act or relevant investigating Act; or
- (d) confiscate or forfeit any property, benefit or other proceed obtained from or through the conduct or reprisal or acquired by any person through the commission of any offence under this Act or any investigating Act.

60. (1) A Member who makes a disclosure, or an investigating authority which refers a disclosure to another investigating authority, may request the investigating authority to which the disclosure was made or referred to provide a progress report.

Progress report

(2) Where a request is made under subsection (1), the investigating authority to which the request is made shall provide a progress report to the person or authority who requested it—

- (a) within fourteen days from the date of receipt of the request; and
- (b) if the investigating authority takes further action with respect to the disclosure after providing a progress report under paragraph (a)—
 - (i) while the authority is taking action, at least once in every ninety day period commencing on the date of provision of the report under paragraph (a); and
 - (ii) on completion of the action.

(3) A progress report provided under subsection (2) shall contain the following particulars with respect to the investigating authority that provides the report:

- (a) where the authority has declined to act on the disclosure, that it has declined to act and the grounds on which it so declined;

- (b) where the authority has referred the disclosure to another investigating authority, that it has referred the disclosure to another authority and the name of the authority to which the disclosure has been referred;
- (c) where the authority has accepted the disclosure for investigation, the current status of the investigation; and
- (d) where the authority has accepted the disclosure for investigation and the investigation is complete, its findings and any action it has taken or proposes to take as a result of its findings.

(4) Nothing in this section prevents any investigating authority from providing a progress report in accordance with subsection (3) to a person who may make a request under subsection (1).

Joint action

61. Where more than one investigating authority is required by this Act to act on a disclosure, the investigating authorities may enter into such arrangements with each other as are necessary and reasonable to—

- (a) avoid duplication of action;
- (b) allow the resources of the authorities to be efficiently and economically used to take action; and
- (c) achieve the most effective result.

Powers of
Disciplinary
Committee of
Institute

62. Nothing in this Part shall prevent the Disciplinary Committee from receiving and investigating a disclosure concerning the Members of the Institute.

PART VI

Protection Against Reprisals

Protection
against
reprisals

63. (1) A person who takes any detrimental action against a Member who makes a disclosure that is in reprisal for the Member making the protected disclosure commits an offence and is liable, upon conviction, to a fine not exceeding nine hundred thousand penalty units or to imprisonment for a period not exceeding ten years, or to both.

(2) Proceedings for an offence under this section may be instituted at any time within two years after the offence is alleged to have been committed.

64. (1) A Member shall not be subject to any liability for making a protected disclosure and no action, claim or demand shall be taken or made of or against the Member for making the disclosure. Protection against actions, etc

(2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure, whether or not imposed by an Act, applicable to a Member.

(3) A Member who makes a protected disclosure in accordance with this Act—

(a) has a defence of absolute privilege in respect of the publication to the relevant investigating authority or the Institute of the disclosure in proceedings for defamation;

(b) on whom a provision of an Act, other than this Act, imposes a duty to maintain confidentiality with respect to any information disclosed is taken not to have committed an offence against the Act;

(c) who is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect to the disclosure is taken not to have breached the oath, rule of law or practice or a law relevant to the oath, rule or practice; and

(d) is not liable to disciplinary action because of the disclosure.

65. An investigating authority, the Institute or an officer of an investigating authority to whom a protected disclosure is made or referred shall not disclose information that might identify or tend to identify a Member who has made any protected disclosure unless— Confidentiality guideline

(a) the Member consents in writing to the disclosure of that information;

(b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or

(c) the investigating authority or the Institute is of the opinion that the disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

Employer to
protect Member
against reprisals

66. Within six months of the commencement of this Act, an employer shall establish procedures to protect Members from reprisals that are, or may be, taken against them.

Prohibition of
unlawful
reprisals

67. (1) A person shall not engage, or attempt or conspire to engage, in an unlawful reprisal.

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction—

(a) if the offender is a natural person, to a fine not exceeding five hundred thousand penalty units or to imprisonment for five years, or to both; or

(b) if the offender is a body corporate, to a fine not exceeding nine hundred thousand penalty units.

Investigation
authority to
assist
complainant

68. (1) Where an investigating authority receives a disclosure that relates to an unlawful reprisal, it shall provide the Member who made the disclosure with information about the protection and remedies available under this Act in relation to an unlawful reprisal.

(2) An investigating authority shall provide any Member who has suffered an unlawful reprisal with access to counselling services where requested by the Member to do so.

Relocation
powers

69. (1) Where a Member applies in writing to the employer for relocation and the employer considers—

(a) that there is a danger that a person will engage in an unlawful reprisal in relation to the Member if the Member continues to hold the Member's current position; and

(b) that the only practical means of removing or substantially removing the danger is relocation of the Member to another position in an employing agency;

the employer shall, as far as practicable, make arrangements for the relocation of the Member to another position in the employing agency.

(2) Where a Member is relocated in accordance with this section, the employing agency of the Member being relocated shall—

(a) meet all reasonable relocation expenses; and

(b) take all reasonable steps to ensure that the Member is placed in a position of equivalent level of salary and duties.

70. Section *sixty-nine* does not authorise the relocation of a Member in relation to an employer to another position in the employing agency without the consent of the Member. Consent to relocation

71. (1) A Member who has been subjected, is subject or may be subjected, to an occupational detriment in breach of section *thirty-eight*, may— Remedies

(a) apply to any court of competent jurisdiction, including the Industrial Relations Court for appropriate relief; or Cap. 369

(b) pursue any other process allowed or prescribed by any law.

(2) For the purposes of the Industrial and Labour Relations Act, including the consideration of any matter arising from this Act by the Industrial Relations Court—

(a) any dismissal in breach of section *thirty-eight* is deemed to be an unfair dismissal; and

(b) any other occupational detriment in breach of section *thirty-eight* is deemed to be an unfair labour practice.

(3) A Member who has made a protected disclosure and who reasonably believes that the Member may be adversely affected on account of having made that disclosure, shall, at that Member's request and if reasonably possible or practicable, be transferred from the post or position occupied by that Member at the time of the disclosure, to another post or position in the same division or another division of the employer or, where the person making the disclosure is employed by a government agency to another government agency.

(4) The terms and conditions of employment of a Member transferred in terms of subsection (3) shall not, without the Member's written consent, be less favourable than the terms and conditions applicable to that person immediately before the Member's transfer.

PART VII

DISCIPLINARY COMMITTEE

Professional
misconduct

72. A Member commits professional misconduct if the Member—

- (a) contravenes the provisions of this Act;
- (b) unlawfully discloses or uses to the Member's advantage any information acquired in the course of professional work on behalf of a client;
- (c) engages in conduct that is dishonest, fraudulent or deceitful;
- (d) commits an offence under any other law;
- (e) engages in any conduct that is prejudicial to the accountancy profession or is likely to bring it into disrepute; or
- (f) breaches the Code of Ethics or accounting or auditing pronouncements or encourages another Member to breach or disregard the principles of the Code of Ethics or accounting or auditing pronouncements.

Initiation of
disciplinary
action

73. (1) A person may lodge a complaint with the Disciplinary Committee against a chartered accountant or Member where the person alleges that the chartered accountant or Member has contravened the Code of Ethics or any provision of this Act.

(2) The Institute may initiate disciplinary action under this section where the Institute has reasonable grounds to believe that a chartered accountant or Member has contravened the Code of Ethics or any provision of this Act.

(3) A complaint or allegation shall be made to the Secretary in the prescribed manner and form.

Disciplinary
Committee

74. (1) There shall be a Disciplinary Committee of the Institute comprising the following Members:

- (a) a Chairperson;
- (b) a Vice-Chairperson; and
- (c) four chartered accountants in practice for not less than ten years, one Member of which shall be from the public practice elected by the Members at the annual general meeting of the Institute.

(2) The Chairperson and Vice-Chairperson shall be legal practitioners qualified to hold, or who have held, high judicial office.

(3) A person shall not be appointed as a Member of the Disciplinary Committee if the person—

- (a) has committed or been convicted of any professional misconduct;
- (b) is in lawful custody or the person's freedom of movement is restricted under any law in force within or outside Zambia;
- (c) has not been on the Register for at least ten years preceding the election or appointment; or
- (d) has been convicted of any offence involving dishonesty.

(4) A Member of the Disciplinary Committee shall hold office for three years and may be re-elected for a further term of three years.

(5) A Member of the Disciplinary Committee shall not serve for more than two terms.

(6) The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, shall preside at every meeting and every sitting of the Disciplinary Committee.

75. (1) The functions of the Disciplinary Committee are to hear and determine—

- (a) any disciplinary action initiated by the Institute against a chartered accountant or a Member who has contravened any provision of the Code of Ethics or any provision of this Act; or
- (b) any complaint or allegation made by any person against a chartered accountant or a Member.

(2) The Disciplinary Committee may publicise, as the Committee may consider appropriate, the facts relating to any chartered accountant or a Member who is found guilty of and punished for professional misconduct.

76. (1) Four Members of the Disciplinary Committee shall form a quorum.

(2) Any question at a sitting of the Disciplinary Committee shall be decided by a majority of the votes of the Members of the Disciplinary Committee at the meeting and in the event of

Functions of
Disciplinary
Committee

Proceedings of
Disciplinary
Committee

an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(3) All proceedings of the Disciplinary Committee shall be in camera.

(4) The Disciplinary Committee shall cause to be kept a record of its proceedings.

(5) A party to a hearing of the Disciplinary Committee may be represented by a legal practitioner or, if the party so elects, by any other person or in person.

(6) A decision of the Disciplinary Committee shall be in the form of a reasoned judgment and a copy thereof shall be supplied to each party to the proceedings and to every person affected by the decision.

(7) If a person is present at a meeting of the Disciplinary Committee at which any matter is the subject of consideration, and in which matter the person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, disclose the interest and shall not, unless the Disciplinary Committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.

(8) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Powers of
Disciplinary
Committee

77. (1) The Disciplinary Committee may, for the purposes of any hearing, hear and receive evidence and may, under the hand of the Chairperson or the Secretary, summon witnesses and require the production of any book, record, document, electronic record or anything required for the purposes of the proceeding and may through the Chairperson or Vice Chairperson administer an oath to any witness.

(2) A person summoned to attend before the Disciplinary Committee who, without sufficient cause—

(a) refuses or fails to attend at the time and place specified in the summons or, having attended, leaves without the permission of the Disciplinary Committee;

(b) having attended, refuses to be sworn or to affirm;

(c) refuses, without lawful excuse, to answer fully and satisfactorily to the best of that person's knowledge and belief, any question lawfully put to that person;
or

- (d) refuses to produce any book, record, document or thing which that person has been required by summons to produce;

commits an offence and is liable, upon conviction, for every such refusal or failure, to a fine not exceeding twenty thousand penalty units.

(3) A person shall not be compelled to answer any question or produce any book, record or document which that person would not be compelled to answer or produce on the trial of an action in the High Court.

Cap. 87

(4) A hearing before the Disciplinary Committee shall, for all purposes, and in particular for the purposes of Chapter XI of the Penal Code, be deemed to be a judicial proceeding.

(5) Where the Disciplinary Committee, after due inquiry, finds a chartered accountant or a Member guilty of professional misconduct, it may impose one or more of the following penalties:

- (a) order the cancellation of the chartered accountant's or Member's practicing certificate, non-audit practising certificate or certificate of registration;
- (b) censure the chartered accountant or Member;
- (c) caution the chartered accountant or Member;
- (d) impose a fine, not exceeding one hundred thousand penalty units to be paid to the Institute;
- (e) order the chartered accountant or Member to pay to the Institute or to any other party to the hearing any costs of or incidental to the proceedings;
- (f) order the chartered accountant or Member to pay any party to the hearing or other person, as restitution, the amount of loss caused by that person's negligence; or
- (g) impose any reasonable conditions for the suspension, for a period not exceeding one year of, the chartered accountant's membership, certificate of registration practising certificate or a non-audit practising certificate.

(6) In any hearing before the Disciplinary Committee, any finding of fact which is shown to have been made by any court in Zambia shall be conclusive evidence of the fact so found.

(7) The Disciplinary Committee shall, where it has reasonable cause to believe that a chartered accountant is, or has become mentally unsound to the extent that the continued practising by the chartered accountant is prejudicial to the public interest, refer the matter for determination by a medical practitioner.

(8) The Disciplinary Committee shall, where a medical practitioner determines that a chartered accountant is of unsound mind, suspend the practising certificate of the chartered accountant.

(9) Where the Disciplinary Committee, after due inquiry, finds a chartered accountant or Member not guilty of professional misconduct, it shall record a finding that the chartered accountant or Member is not guilty of such conduct in respect to matters to which the charge relates.

(10) The Disciplinary Committee may, for the purpose of any proceedings use such assessors or experts as the Committee may determine.

Reports by
Disciplinary
Committee

78. The Disciplinary Committee shall, as soon as practicable after the completion of each hearing, submit to the Institute a report of the proceedings together with a copy of the record.

Appeals to High
Court

79. (1) A person aggrieved by a decision of the Disciplinary Committee may appeal to the High Court within thirty days of the decision.

(2) The Institute shall be the respondent on any appeal under this section.

(3) A decision of the Disciplinary Committee under this Part shall not take effect until the expiration of the time for lodging an appeal against the decision or, if an appeal is lodged, until the time the appeal is disposed of, withdrawn or struck out for want of prosecution, as the case may be.

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

(a) confirm, vary or set aside any finding made, penalty imposed or direction given by the Disciplinary Committee;

(b) remit the matter to the Disciplinary Committee for further consideration in accordance with such directions as the High Court may give; or

(c) make such other order as to costs or otherwise as it considers appropriate.

(5) No proceedings of the Disciplinary Committee shall be set aside by reason only of some irregularity in those proceedings if such irregularity did not occasion a substantial miscarriage of justice.

80. The Chief Justice may, by statutory instrument, make rules regulating appeals to the High Court under this Part.

Rules by Chief Justice

81. (1) The Chief Justice may, by statutory instrument, on the recommendation of the Institute, make rules relating to—

Rules relating to disciplinary proceedings

- (a) the form for lodging of complaints under this Part;
- (b) the mode of summoning the Members;
- (c) the form and manner of service of a summons requiring the attendance of a witness before the Disciplinary Committee and the production of any book, record, document or thing;
- (d) the procedure to be followed and rules of evidence to be observed in proceedings before the Disciplinary Committee; and
- (e) the functions of the assessor to the Disciplinary Committee.

(2) Rules made under this section may, in particular, provide—

- (a) that before any matters are referred to the Disciplinary Committee they shall, in such manner as may be provided by the rules, have been brought before and investigated by the Institute in this respect;
- (b) for securing notices for the proceedings and specifying the time and manner of the proceedings; and
- (c) for securing that any party to the proceedings shall, if that person requires, be entitled to be heard by the Disciplinary Committee.

PART VIII

GENERAL PROVISIONS

82. (1) A court of competent jurisdiction shall have jurisdiction over chartered accountants for any act committed outside Zambia which, if it had been committed in Zambia, would have been an offence or professional misconduct under this Act.

Jurisdiction

(2) Any proceedings against a chartered accountant under this section which would be a bar to subsequent proceedings against the chartered accountant, for the same offence, if the offence had been committed in Zambia, shall be a bar to further proceedings against the chartered accountant under any written law relating to the extradition of persons, in respect of the same offence outside Zambia.

Cap. 98

(3) The Mutual Legal Assistance in Criminal Matters Act shall apply to proceedings under this Act.

Administrative
justice

83. Subject to the other provisions of this Act, where the Institute, Council or any committee takes any decision or other step of an administrative nature under this Act which affects the rights and duties of any person, structure or body, or issues newsletters or circulars of general interest or to be acted on as guidelines, the Institute Council or committee shall—

(a) publish or otherwise make known the nature and effect of those decisions or steps in a written, printed or electronic manner to the affected person, structure or body in a manner designed to ensure that the person, structure or body acquires full knowledge of the decisions or steps; and

(b) comply with the applicable requirement of just administrative action, including the furnishing of reasons for the decisions imposed by, under or by virtue of any law.

Prohibition of
disclosure of
confidential
information

84. (1) A person shall not, without authorisation, make a record of, or wilfully disclose to another person, confidential information gained through the person's involvement in the administration of this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) Subsection (1) does not apply to a person who makes a record of, or discloses, confidential information—

(a) to another person for the purposes of this Act;

(b) to another person, if expressly authorised under any other law; or

(c) for the purposes of a proceeding in a court or tribunal.

(4) In this section, “confidential information” means—

- (a) information about the identity, occupation or whereabouts of a Member who has made a disclosure or a person against whom a disclosure has been made;
- (b) information contained in a disclosure;
- (c) information concerning an individual’s personal affairs; or
- (d) information that, if disclosed, may cause detriment to any person or a Member.

85. (1) A Member shall not knowingly or recklessly make a false or misleading statement, orally or in writing, to any investigating authority or the Institute with the intention that it be acted on as a disclosure.

False or misleading information or disclosure

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction—

- (a) if the offender is a natural person, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five year, or to both; or
- (b) if the offender is a body corporate, to a fine of nine hundred thousand penalty units.

86. The Institute may, subject to the other provisions of this Act and the provisions of the constitution of the Institute, by *Gazette*, make statutory rules relating to the Institute, the Council, the committees of the Council, Council Members, Members of the Institute, the staff of the Institute and persons studying or intending to become accountants.

Rules by Institute

87. The Minister may, in consultation with the Council, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

Regulations

88. (1) The Accountants Act, 1982, is hereby repealed.

Repeal of Cap. 390

(2) Notwithstanding subsection (1), the provisions of the Second Schedule shall apply in respect of the matters specified therein.

FIRST SCHEDULE
(Sections 3(2) and 9(5))

PART I

ADMINISTRATION OF COUNCIL

Tenure of office
of Council
Members

1. (1) A member of the Council shall, unless the member vacates office earlier, hold office for a period of three years from the date of election or appointment and may be re-elected or re-appointed for a further term of three years.

(2) A Council member shall not serve for more than two terms.

(3) A Council member may resign upon giving one month's notice to the Institute.

(4) The Council shall, where there is a vacancy on the Council, appoint another member who shall serve as a Council member until the date of the next annual general meeting of the Institute.

(5) A Council member shall cease to hold office—

(a) if the Council member ceases to be a chartered accountant;

(b) if the Council member is disqualified under subsection (4) of section *nine*;

(c) if the member dies;

(d) if the member is declared to be of unsound mind;

(e) if the member is declared bankrupt;

(f) if the member is convicted of an offence involving dishonesty or any other offence under any other law;

(g) in the case of the member to whom paragraph (e) of subsection (2) of section *nine* applies, on the member ceasing to hold the office by virtue of which the member was appointed to the Council;

(h) if the member is absent, without reasonable excuse, from three consecutive meetings of the Council of which the member has had notice; or

(i) upon the expiry of not less than one month's notice in writing of that member's intention to resign given by that member to the Institute, and in the case of an appointed member, copied to the appointing authority.

2. (1) Subject to the other provisions of this Act, the Council may regulate its own procedure. Proceedings of Council

(2) The Council shall meet at least once in every quarter of the year for the transaction of its business at such places and times as the President may determine.

(3) Upon giving notice of not less than seven days, a meeting of the Council may be called by the President and shall be called if not less than five Council members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Five Council members shall form a quorum at any meeting of the Council.

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

(a) the President;

(b) in the absence of the President, the Vice-President; or

(c) in the absence of both the President and Vice-President, such member as the members present shall elect for the purpose of that meeting.

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

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

(8) The validity of any proceedings, act or decision of the Council or any committee of the Council shall not be affected by any vacancy in the membership of the Council or committee or by any defect in the appointment of any member or by reason that a person not entitled to do so took part in the proceedings.

(9) The Council shall cause minutes to be kept of the proceedings of every meeting of the Council and of every meeting of any committee of the Council.

3. (1) The Council may, for the purpose of performing functions under this Act, constitute any committee and may delegate to the committee any of its functions. Committees of Council

as the Council may, with the approval of the Minister, determine; and

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

Investment of funds

10. The Institute may invest in such manner as it considers necessary any of its funds which it does not immediately require for the performance of its functions.

Financial year

11. The financial year of the Institute shall be a period of twelve months ending on 31st December in each year.

Accounts

12. (1) The Institute shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Institute shall be audited annually by independent auditors appointed by the Council.

(3) The fees of the auditors shall be paid by the Institute.

Annual report

13. (1) As soon as is practicable, but not later than three months after the financial year, the Council shall submit to the Minister a report concerning the activities of the Institute during such financial year.

(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Institute and there shall be appended thereto—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information regarding activities undertaken during the year, as the Minister may require.

(3) The Minister shall, not later than thirty days after the first sitting of the National Assembly next after the receipt of the report referred to in subparagraph (1), lay it before the National Assembly.

SECOND SCHEDULE

(Section 88 (2))

SAVINGS AND TRANSITIONAL PROVISIONS

Savings and transitional provisions
Cap. 390

1. (1) Notwithstanding the repeal of the Accountants Act, 1982, a person registered as an accountant under the repealed Act shall continue practising as an accountant for a period of three months from the commencement of this Act, after which the person shall register in accordance with the provisions of this Act.

(2) After the commencement of this Act, the Council of the Zambia Institute of Chartered Accountants constituted under the repealed Act shall continue to exist until the new Council under this Act is constituted.

Cap. 390

(3) Any Register maintained under the repealed Act and subsisting immediately before the commencement of this Act shall, until replaced, be deemed to be a Register maintained under this Act.

Cap. 390

2. (1) For the avoidance of doubt, a person who immediately before the commencement of this Act held office as Secretary or employee of the Institute, shall continue to hold such office as Secretary or employee of the Institute as if appointed under this Act.

Staff of Institute

(2) The service of persons referred to in sub-paragraph (1) shall be treated as continuous service.

(3) Nothing in this Act affects the rights and liabilities of any person employed or appointed by the Institute immediately before the commencement of this Act.

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