



MALAWI GOVERNMENT

**PUBLIC ACCOUNTANTS
AND AUDITORS ACT**
(NO. 5 of 2013)

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MALAWI GOVERNMENT

(Published 19th July, 2013)

ACT

No. 5 of 2013

I assent

DR. JOYCE BANDA

PRESIDENT

15th July, 2013

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—ESTABLISHMENT OF THE MALAWI ACCOUNTANTS BOARD

3. Establishment of the Malawi Accountants Board
4. Appointment and membership of the Board
5. Disqualification from appointment to the Board
6. Vacation of office by members
7. Tenure of office
8. Chairman and Vice-Chairman of the Board
9. Meetings of the Board
10. Quorum and majority decisions
11. Committees of the Board
12. Reports to the Minister

PART III—FUNDS OF THE BOARD

13. Funds of the Board and keeping and audit of accounts
14. Non liability of the Board
15. Remuneration and allowances of members

PART IV—FUNCTIONS, POWERS AND OBJECTIVES OF THE BOARD

16. General powers of the Board
17. Objectives of the Board
18. Maintenance of standards of examinations

SECTION

19. Registered training contracts
20. Powers and duties of auditors
21. Information to be furnished by registered accountants

PART V—REGISTER AND REGISTRATION

22. Register of Chartered Accountants and Diplomate Accountants
23. Register to be open to inspection
24. Compulsory registration
25. Qualification for registration
26. General prohibition
27. Application for registration
28. Registration
29. Cancellation or suspension of registration
30. Restoration of registration

PART VI—SECRETARIAT OF THE BOARD

31. Secretary and other staff of the Board
32. Disclosure of interest by employees, etc.
33. Oath of secrecy
34. Prohibition of publication or disclosure of information by unauthorized persons
35. Protection of employees

PART VII—DISCIPLINE

36. Disciplinary proceedings
37. Review of disciplinary proceedings
38. Appeal to the Board against disciplinary action
39. Suspension of registered accountants who are mentally disabled

PART VIII—THE INSTITUTE

40. Objectives of the Institute
41. Functions of the Institute
42. Powers of the Institute

PART IX—PRACTISING CERTIFICATE

43. Prohibition against practice without practising certificate
44. Application for practising certificate
45. Issue or refusal of practising certificate

SECTION

46. Unregistered person prohibited from practising
47. Period of validity of practising certificate
48. Withdrawal of practising certificate
49. Surrender of withdrawn or invalid practising certificate

PART X—MISCELLANEOUS

50. Use of certain designations
51. Offences by unregistered persons
52. Offences and penalties
53. Exemptions
54. Appeals from decisions of the Board
55. Evidence
56. By-laws
57. Regulations
58. Compliance with the provisions of the Public Finance Management Act
59. Repeal and savings

PART XI—TRANSITIONAL PROVISIONS

60. Saving of existing appointments and membership
61. Transfer of membership to professional accountancy bodies
62. Saving of existing programmes, students and qualifications
63. Transfer of employees
64. Transfer of assets, liabilities, etc.

An Act to provide for the establishment of the Malawi Accountants Board; for the registration of chartered accountants and diplomate accountants; and to make provision for matters connected therewith or incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Public Accountants and Auditors Act, 2012, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.
Short title and
commence-
ment
2. In this Act, unless the context otherwise requires—
Interpretation

"audit" means an independent examination of financial statements by an auditor to enable him express an opinion on whether financial statements are prepared, in all material respects, in accordance with an identified financial reporting framework;

"Board" means the Malawi Accountants Board established under section 3;

"chartered accountant" means a person who is registered as a Chartered Accountant;

Cap. 30:01

"College" means the Malawi College of Accountancy established by the Education Act;

"diplomat accountant" means a person who is registered as a Diplomat Accountant;

"financial year" means the period of twelve months ending on 30th June of each year;

Cap. 46:03

"Institute" means the Institute of Chartered Accountants in Malawi incorporated under the Companies Act;

"Member" means a member of the Board;

"practising certificate" means a certificate issued by the Institute permitting the holder to carry on practice as a chartered accountant in public practice;

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

"registered trainee" means a person who is engaged under a registered training contract;

"registered training contract" means a written contract accepted for registration pursuant to the provisions of section 19 (1) whereby a person engages to serve another for a specified period in order to receive training in the profession of a chartered accountant or diplomat accountant.

PART II—ESTABLISHMENT OF THE MALAWI ACCOUNTANTS BOARD

Establishment
of the Malawi
Accountants
Board

3.—(1) There is hereby established a Board to be known as the Malawi Accountants Board.

(2) The Board shall be a body corporate with perpetual succession, and a common seal, and with capacity, in its corporate name, to—

- (a) possess and own property, real or personal;
- (b) sue and be sued;
- (c) enter into contracts; and
- (d) do all such other things which a body corporate may lawfully do.

4.—(1) Members of the Board shall be appointed by the Minister and shall consist of the following—

Appointment
and
membership
of the Board

- (a) two persons nominated by the Institute from amongst its members, one of whom shall be a non-practicing member and the other from an academic institution;
- (b) one person nominated by the Malawi Confederation of Chambers of Commerce and Industry; and
- (c) the following ex-officio members—
 - (i) the Secretary to Treasury;
 - (ii) the Secretary responsible for Education;
 - (iii) the Accountant General;
 - (iv) the Auditor General;
 - (v) the Governor of the Reserve Bank of Malawi;
 - (vi) the Commissioner General of the Malawi Revenue Authority;
 - (vii) the Secretary for Justice; and
 - (viii) the Chief Executive Officer of the Malawi Stock Exchange.

(2) An *ex-officio* member of the Board may appoint a senior officer from his institution as an alternate permanent representative at meetings of the Board.

(3) The name, qualifications and date of appointment of every person appointed as a member of the Board shall be published in the *Gazette*.

5. A person shall be disqualified from being appointed as a member of the Board if that person—

Disqualifica-
tion from
appointment
to the Board

- (a) is declared bankrupt under any law in force in Malawi;
- (b) is under any law in force in Malawi adjudged or otherwise declared to be of unsound mind;
- (c) has at any time been convicted of an offence involving corruption, theft, fraud, forgery, perjury or dishonesty;

(d) has, within the past five years, been convicted of an offence under any written law punishable by a minimum term of six months' imprisonment without the option of a fine;

(e) would, for any other reason, be disqualified by law from serving as a director of a company or a trustee of a trust within Malawi; and

(f) would have a conflict of interest if appointed to the Board.

Vacation of
office by
members

6. A member of the Board other than an *ex-officio* member shall vacate his office—

(a) upon the presentation of a petition for his bankruptcy, or upon execution of an unsatisfied judgment against his estate;

(b) if he is convicted of an offence under any written law and sentenced to a minimum term of six months' imprisonment, otherwise than as an alternative to, or in default of, the payment of a fine;

(c) if he is convicted of any offence involving corruption, theft, fraud, forgery, perjury or dishonesty;

(d) if, in the opinion of the Minister, or the authority by which he was nominated, as the case may be, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board;

(e) if the Minister or the authority by which he was nominated, is satisfied that the personal interests of the member conflict or are likely to conflict with his duties as a member, and that consequently, it is inappropriate for him to continue to hold office as a member;

(f) upon the expiry of one month's notice in writing to the Minister or the authority by which he was nominated, of his intention to resign his office;

(g) upon receipt of notice of termination of his appointment, from the Minister or the authority by which he was appointed;

(h) if he is absent from three consecutive meetings of the Board, of which he has had notice, without leave of the Board, which leave shall not be unreasonably withheld;

(i) if he ceases to hold the qualifications for which he was appointed member pursuant to section 4; and

(j) upon his death.

Tenure of
office

7.—(1) A member of the Board other than an *ex-officio* member shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(2) Whenever the office of a member falls vacant before expiration of the period for which the member was appointed, the Minister or other authority which appointed the member shall, subject to the provisions of section 4, appoint any other person to fill the vacancy.

8.—(1) Members of the Board shall, at their first meeting following their appointment, and thereafter as need arises, elect out of their number other than members *ex-officio*, a Chairman and a Vice-Chairman, and the persons so elected shall hold office as such until the end of their term of office as members.

Chairman and
Vice-
Chairman of
the Board

(2) If for any reason the Chairman is not able to act as chairman, the Vice-Chairman shall act in his stead.

9.—(1) The Board shall meet at least four times a year, and the time and venue of every meeting shall be determined by the Board from time to time.

Meetings of
the Board

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

(3) Meetings of the Board shall be conducted in such manner as the Board thinks fit.

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

10.—(1) A simple majority of all members of the Board present shall form a quorum for any meeting of the Board.

Quorum and
majority
decisions

(2) The Chairman or, in his absence, the Vice-Chairman, shall preside at meetings of the Board, but in the absence of both the Chairman and the Vice-Chairman, the members present shall elect one of their number to preside at the meeting.

(3) The decision of a simple majority of the members of the Board present at any meeting shall constitute a decision of the Board.

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

(5) No decision or act done under the authority of the Board shall be invalid by reason only of an interim vacancy on the Board, or of the fact that a person who is disqualified from being a member, or with respect to whose appointment the provisions of this Act had not been complied with, sat or acted as a member at the time when the decision was taken or the act was performed or authorised, if the decision was taken or the act was performed or authorised by a majority of the members present at the time who were entitled to sit and act as members.

Committees of
the Board

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

(2) The Board may assign to a committee such of its powers as it may deem fit, but shall not be deemed to be divested of any power which it may have assigned to a committee, and may alter any decision of any such committee.

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

Reports to the
Minister

12.—(1) The Chairman of the Board may submit to the Minister reports regarding matters connected with the activities of the Board which, in the Chairman's opinion, should be brought to the attention of the Minister from time to time.

(2) The Board shall, at the request of the Minister, the Attorney General or the Registrar General, furnish to the Minister or such other public officer, advice on questions in connection with the accountancy and auditing profession or cognate matters, and shall communicate to the Minister information acquired by it, in the course of its duties, on matters regarded by it as being of public importance.

PART III—FUNDS OF THE BOARD

Funds of the
Board and
keeping and
auditing of
accounts

13.—(1) Funds of the Board shall consist of—

(a) such moneys as may be collected by the Board by way of levies from institutions and individuals registered with the Board;

(b) such moneys as may be collected by the Board by way of fees;

(c) such moneys or assets as may accrue to or vest in the Board, whether in the course of the exercise of its functions or powers, or otherwise;

(d) such moneys or other assets as may accrue to or vest in the Board by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interests or royalties, from the Government or any other person;

(e) such moneys as may be derived from the sale of any property, real or personal, by or on behalf of the Board;

(f) such moneys as may be received by the Board by way of voluntary contributions; and

(g) such moneys or other assets as may be donated to the Board by any foreign government, international agency or other external body of persons, corporate or unincorporate.

(2) The Board shall cause to be kept proper books of account and other records in relation to all moneys and other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board.

(3) The accounts of the Board shall be audited annually by a chartered accountant in public practice appointed by the Board.

(4) The expenses of, and incidental to, any audit shall be payable out of the funds of the Board.

(5) The Board shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report of its work and operations.

14.—No legal proceedings, whether criminal or civil, shall lie against the Board in respect of any act or duty performed in good faith in accordance with the provisions of this Act.

Non-liability
of the Board

15.—(1) A member of the Board or of any Committee, as the case may be, shall be paid such remuneration and allowances, if any, as the Board may in its discretion determine.

Remuneration
and
allowance of
members

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

(3) The Board shall, in any case where a member does not make a direct claim to the Board, refund to the appropriate Ministry or institution, as the case may be, any transport or subsistence allowances paid by such Ministry or institution to such member whilst engaged in the business of the Board.

PART IV—FUNCTIONS, POWERS AND OBJECTIVES OF THE BOARD

16.—(1) The Board shall have power to—

(a) consider and determine applications for registration under Part V of this Act;

General
powers of
the Board

(b) maintain the Register of chartered accountants and diplomate accountants;

(c) encourage cooperation between the Institute and other professional bodies in matters of common interest;

(d) take such steps as appear to the Board to be necessary or desirable to advance the standing and effectiveness of the accountancy profession in Malawi;

(e) advise the College and the Institute on matters pertaining to examinations and training of accountants;

(f) promote the standardisation of qualifying examinations on common subjects;

(g) take such steps as appear to the Board to be necessary to provide for the manpower requirements of the accountancy profession in Malawi;

(h) advise the Minister on accountancy and cognate matters;

(i) employ such professional, technical and administrative officers, clerks and other servants as it may deem necessary and to lay down conditions of service for such employees;

(j) pay its employees such salary, wages or other remuneration as it may deem fit and to grant them such leave as it may deem fit;

(k) purchase, take on lease, hire or otherwise acquire any real or personal property which it considers necessary for the purpose of performing its functions, or for the purpose of use as dwelling-houses for its employees;

(l) lease dwelling-houses and land for residential purposes for its employees;

(m) construct, maintain, alter or improve any buildings, works, machinery and plant necessary or expedient for the performance of its functions;

(n) prescribe such professional indemnity insurance as it may think fit;

(o) hear and determine appeals from any person aggrieved by a finding of the Institute in relation to admission to membership or to improper conduct, and make such order as to the costs incurred by it in the hearing of such appeals as it may consider equitable;

(p) invest and deal with any of its moneys, not immediately required, in such securities and in such manner as it may think fit and to vary or realize such investments;

(q) review statutory financial statements and financial reports of public interest entities;

(r) monitor the accuracy and fairness of financial reporting and enforce compliance with accounting standards;

(s) establish and maintain an independent investigation and disciplinary scheme for public interest purposes;

(t) oversee the regulatory and professional development activities of professional accountancy bodies;

(u) conduct quality assurance reviews of public auditors and audit firms;

(v) establish procedures for coordination of disciplinary responsibilities and referrals with the Institute;

(w) accredit professional accountancy bodies and trainers that meet the required standards;

(x) oversee the activities of professional accountancy bodies, including their training and professional qualification examinations;

(y) formulate any syllabus, training requirement or examination structure applicable to its registrants or prospective registrants, and to inform the Institute of any such changes; and

(z) do all things incidental or conducive to the furtherance of its powers under this Act.

(2) No action, suit or other proceedings shall be brought or instituted personally against any member in respect of any act done in good faith in the course of carrying out his duties under this Act.

(3) The Board may delegate some of its powers to the Institute.

17. The Board shall regulate the reporting of financial matters and provide direct oversight over professional accountancy bodies and auditors in order to—

Objectives of
the Board

(a) promote high quality reporting of financial and non-financial information by entities;

(b) promote the highest professional standards among auditors and accountants;

(c) enhance the credibility of financial reporting;

(d) improve the quality of accounting and auditing services;

(e) improve the integrity, competence and transparency of professional activities in accounting and auditing;

(f) protect the interests of the general public and investors;

(g) adopt and ensure compliance with and the enforcement of applicable local and international accounting and auditing standards; and

(h) encourage effective collaboration with other regulators.

Maintenance of
standards of
examinations

18.—(1) The Board may, after consultation with all the academic institutions charged with the responsibility of training persons desirous of becoming chartered accountants or diplomate accountants, recommend the adoption of any syllabus, training requirement or examination structure which, in the opinion of the Board, is necessary or desirable to maintain or enhance professional standards.

(2) If an institution referred to in subsection (1) proposes to change any syllabus, training requirement or examination, it shall advise the Board, in writing, of the proposal at least three months before making any such change.

(3) If the Board is of the opinion that any proposal made to it under subsection (2) is detrimental to the interests of the profession, it shall advise the institution concerned in sufficient time to enable the institution cancel or modify the proposed change in the light of the Board's advice.

(4) If any institution—

(a) fails or refuses to adopt any syllabus, training requirement or examination structure recommended by the Board under subsection (1); or

(b) changes any syllabus, training requirement or examination structure in a manner which the Board had advised is detrimental to the interests of the profession,

the Board may refuse an application for registration as a chartered accountant or a diplomate accountant of any person who qualifies from such institution.

Registered
training
contracts

19.—(1) No service under a training contract entered into after the commencement of this Act shall be recognized for the purposes of this Act unless such contract has, through the Institute, been registered with the Board.

(2) No contract shall be registered under subsection (1) unless the person with whom service is to be performed thereunder has obtained the consent of the Institute, in accordance with the requirements of the Board, to engage registered trainees under registered training contracts.

(3) The Institute shall not give its consent referred to in subsection (2) unless—

(a) it can be demonstrated that the trainee shall, during the period of the training contract, receive the personal supervision of a chartered accountant under conditions that will ensure that the trainee shall obtain a sufficiently wide and general practical training and experience; and

(b) upon submission of—

(i) a certificate that a degree or diploma, other than an honorary degree or diploma, approved by the Institute has been conferred upon such person; or

(ii) a certificate that such person has obtained not less than six passes in the Malawi School Certificate of Examination, including credit passes in Mathematics, English, and one other subject, or in an examination approved by the Institute as being of equal standing.

(4) The Institute shall determine the maximum number of trainees who may be engaged for service under training contracts by any person or in the public service during any particular period.

(5) The period of service under training contracts shall be two hundred and fifty full days and five hundred full days, exclusive of days on leave or absence for whatsoever reasons, for eligibility for registration as diplomate accountants and as chartered accountants respectively, such period of service to be substantially uninterrupted and, save as is otherwise provided in this section, to be with one employer for not less than two hundred and fifty consecutive full working days:

Provided that the Institute may in the case of a person who, in the opinion of the Institute, has obtained satisfactory practical training and experience by way of service under conditions substantially the same as under a registered training contract either within Malawi or elsewhere, reduce the period of service under a training contract to such extent as it may deem fit or grant exemption from service under the training contract.

(6) Whenever the service of a registered trainee is terminated before he has served the prescribed period under a registered training contract, the Institute may in its discretion and on such conditions as it may deem fit, approve of the transfer of such registered trainee to some other person or Government Ministry or Department, as the case may be, to complete the remaining portion of his period of service under a registered training contract.

(7) No person shall accept any payment or other reward in consideration of the engagement by him of any person under a registered training contract.

(8) No person who is registered as a non-resident accountant and auditor under this Act shall be entitled to have the services of any registered trainee under a training contract in Malawi.

Powers and
duties of
auditors

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

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

(b) proper accounting records in English have been kept in Malawi in connection with the undertaking in question, so as to reflect and explain all its transactions and record all its assets and liabilities correctly and adequately;

(c) he has obtained all information, vouchers and other documents which in his opinion were necessary for the proper performance of his duties;

(d) he has, in the case of an undertaking regulated by any written law, complied with all the requirements of that law relating to the audit of that undertaking;

(e) he has, by means of such methods as are reasonably appropriate having regard to the nature of the undertaking in question, satisfied himself of the existence of material assets and liabilities shown on such financial statements or annexure;

(f) he is satisfied, as far as is reasonably practicable having regard to the nature of the undertaking in question and of the audit carried out by him, as to the fairness or the truth or the correctness, as the case may be, of such financial statements or annexure; or

(g) any matter referred to in subsection (3) had, at the date on which he so certified or reported or expressed such opinion, been adjusted to his satisfaction.

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

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

(4) Any certificate required to be given or report to be made or opinion to be expressed by an accountant or auditor in his capacity as an accountant or auditor in pursuance of any assignment carried out by him, shall be given or made or expressed within a period of four months after the date on which the assignment was completed, and in any case not more than fifteen months from the previous Annual General Meeting, and if such accountant or auditor is unable to give an unqualified certificate or make an unqualified report or express an unqualified opinion, he shall, within the said period give that certificate or make that report or express that opinion subject to such qualifications as he may deem necessary, and may, if he considers it advisable, endorse on that certificate, report or opinion the reason for any such qualification:

Provided that—

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

(b) unless within thirty days after an auditor has dispatched such a report, he has been satisfied by information received that no such irregularity has taken place or is taking place or that adequate steps have been taken for the recovery of any such loss caused as aforesaid or for the prevention of any such loss likely

to be caused as aforesaid, he shall, through the Institute, furnish the Board with copies of the report and of any acknowledgement of receipt thereof and reply thereto and such other particulars as he may deem fit;

(c) the Board may disclose to the Attorney General or any public officer or any member or creditor of the undertaking concerned, any information supplied to it pursuant to paragraph (b) of this proviso;

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

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

(5) If any person who was acting in the capacity of an auditor regarding any undertaking immediately prior to its bankruptcy or liquidation (whether provisional or final), is satisfied or has reason to believe that at or before the date of the bankruptcy or liquidation, as the case may be, a material irregularity in the conduct of the affairs of such undertaking was taking place or had taken place, which irregularity had caused or was likely to cause financial loss to the undertaking or to any of its members or creditors, and such person did not comply with the provisions of paragraph (a) of the proviso to subsection (4) in respect of such irregularity before the said date, he shall forthwith dispatch a report in writing giving particulars of such irregularity, to the person appointed as trustee or provisional trustee or as liquidator or provisional liquidator, as the case may be, of such undertaking and at the same time supply copies of such report to the person in charge of such undertaking and to the Board.

(6) The Board may disclose to the Attorney General or any public officer or any member or creditor of the undertaking concerned, any information supplied to it pursuant to the provisions of paragraph (b) of the proviso to subsection (4).

(7) If a person who has been registered as an accountant and auditor under the provisions of this Act—

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

(b) is on the basis of prima facie evidence presented to the Board, negligent in the performance of such duties,

the Board may, whether or not such auditor is liable to be or has been criminally charged or has been convicted in respect of such failure or negligence, cause the Institute to enquire into the circumstances, and if such failure or negligence is proved to its satisfaction, impose upon that person any of the penalties prescribed under Part VII of this Act:

Provided that no person shall be penalised by reason of any opinion expressed by him in good faith as to the value or amount of any asset or liability appearing on the balance sheet in respect of the undertaking in connection with which the audit was carried out, or by reason of his having declined to express any opinion thereon, if the Board is satisfied that, having regard to the nature of such asset or liability or any other circumstances, he could not reasonably have been expected to express an authoritative opinion.

(8) No action shall be instituted against any auditor or any person registered as an accountant and auditor under this Act in respect of any opinion expressed or certificate given or report or statement made or statement, account or document certified by him in the ordinary course of his duties, unless it is proved that such opinion was expressed or such certificate was given or such report or statement was made or such statement, account or document was certified maliciously, negligently or with fraudulent intent.

(9) In carrying out his duties under this section, an auditor shall adhere to the provisions of the Code of Conduct promulgated by the Institute.

21. Every person who is registered as a practicing chartered accountant under this Act shall, subject to the provisions of subsection (3)—

Information
to be
furnished by
registered
accountants

(a) notify the Board and every person whom he or his firm acts as auditor of any change in the name, constitution or address of such firm within fourteen days after the date on which such change takes place; and

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

- (i) every firm name or title under which he practices;
- (ii) the place or places of business of all partnerships in which he is in public practice as a partner;

- (iii) the full names of all his partners; and
- (iv) his nationality, his forenames or the initial thereof, his surname and every surname which he may have borne previously and his ordinary business address and his residential address.

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

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

(a) in the case of a person adopted as a child, his surname before his adoption;

(b) in the case of any person, any surname previously borne by him which was changed or disused before he attained the age of eighteen years or has been changed or disused for a period of not less than twenty years; or

(c) in the case of a married or divorced woman or a widow, the surname borne by her before her marriage.

PART V.—REGISTER AND REGISTRATION

Register of
Chartered
Accountants
and Diplomate
Accountants

22.—(1) The Board shall establish a register, to be known as the Register of Chartered Accountants and Diplomate Accountants, which shall be divided into three parts, one for the registration of chartered accountants in public practice, one for the registration of other chartered accountants and the other for diplomate accountants.

(2) The secretary of the Board shall be responsible, subject to any directions given to him by the Board, for maintaining the Register and ensuring that entries are made in the appropriate part of the Register recording—

(a) the name and such other particulars as may be prescribed of each person whom the Board has directed shall be registered;

(b) the fact that a registration certificate has been issued to a registered person, or that any such certificate has ceased to be valid;

(c) particulars of the cancellation or suspension of any person's registration and of the restoration of any such cancelled registration or the termination of any such suspension;

(d) any necessary corrections or alterations to any particulars or facts referred to in paragraph (a), (b) or (c); and

(e) any other particulars that may be prescribed or that the Board may determine.

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

Register to
be open to
inspection

24. Any person resident and working in Malawi who is a member in good standing of the Institute or an association of accountants which is recognised by the Institute shall register as a member of the Institute within ninety days from either the date of commencement of this Act or taking up residence in Malawi.

Compulsory
registration

25.—(1) A person shall be qualified for registration as a chartered accountant or diplomate accountant if he is a member in good standing of the Institute.

Qualification
for
registration

(2) A person shall not be qualified for registration if—

(a) he has been adjudged or otherwise declared insolvent or bankrupt under a law in force in any country and has not been rehabilitated or discharged;

(b) he has made an assignment to or arrangement or composition with his creditors under a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or

(c) within the period of five years immediately preceding his application for registration—

(i) he has been convicted inside or outside Malawi of a criminal offence which, in the opinion of the Board, is of a disgraceful or dishonourable nature;

(ii) he has behaved in a manner which, in the opinion of the Board after consultation with the Institute, is of a disgraceful or dishonourable nature; or

(iii) he has been certified either inside or outside Malawi to be mentally disordered or defective or of unsound mind in terms of the Mental Treatment Act or an equivalent law in a foreign country and the certification remains in force.

Cap. 34:02

(3) Before reaching a decision as to whether or not a person is disqualified for registration under subsection (2), the Board shall—

(a) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person, as the Board may think fit; and

(b) pay due regard to any representations made by him under paragraph (a).

General
prohibition

26.—(1) No person shall, unless he is registered by the Board as a chartered accountant or diplomate accountant—

(a) offer services as, or hold himself out to be a public accountant, chartered accountant or diplomate accountant; or

(b) do anything likely to lead persons to infer that he is a public accountant, chartered accountant or diplomate accountant.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K100,000 and imprisonment for two years.

Application
for
registration

27.—(1) Any person who wishes to be registered as a chartered accountant or a diplomate accountant shall submit to the Institute an application therefor in the form and manner prescribed, together with the prescribed registration fee.

(2) On receipt of an application under subsection (1), the secretary of the Institute shall certify in writing whether or not the applicant is—

(a) a member in good standing with the Institute; and

(b) qualified for registration as a chartered accountant or a diplomate accountant, as the case may be,

and shall forward the application together with the registration fee, to the Board.

Registration

28.—(1) The Board shall consider every application for registration forwarded to it under section 27 and—

(a) if the Board is satisfied that the applicant is qualified for registration, the Board shall direct the secretary of the Board to register the applicant in the appropriate part of the Register; and

(b) if the Board is not satisfied, the Board shall refuse the application and direct the secretary of the Board to notify the Institute which shall notify the applicant in writing of its decision.

(2) Any person who desires to be registered as a non-resident chartered accountant or diplomate accountant shall, under his hand, apply to the Board through the Institute for such registration accompanied by the prescribed fee and such information as the Board may require, and if, after consideration of any such application the Board is satisfied that the applicant—

(a) is of full age and is not ordinarily resident in Malawi;

(b) is a member of a body of accountants and auditors recognized by the Board for the purposes of this subsection, the Board shall register the applicant as a non-resident chartered accountant or diplomate accountant and issue to him a certificate of registration in such form as it may prescribe.

(3) The Board shall not register any person under this section—

(a) if he has at any time been removed from an office of trust on account of misconduct;

(b) if he has at any time been convicted of theft, fraud, forgery or uttering a forged document or perjury, and sentenced in respect thereof to imprisonment or to a fine;

(c) if he is of unsound mind; or

(d) if he is disqualified from registration consequent upon any punishment imposed under this Act,

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

(4) The Board shall cancel the registration of any person—

(a) who subsequent to his registration becomes subject to any of the disqualifications stated in paragraph (a) or (b) of subsection (3);

(b) whose estate is adjudged bankrupt;

(c) who enters into an arrangement with his creditors;

(d) whose registration was made in error or on information subsequently proved to be false; or

(e) who has, prior to his registration, been guilty of misconduct by reason whereof he is in the opinion of the Board not a fit person to be so registered.

(5) The Board shall cancel the registration of any person who is a non-resident chartered accountant or diplomate accountant if—

(a) subsequent to his registration, he becomes resident in Malawi;

(b) he becomes subject to any of the disqualifications specified under subsection (4) other than that set out in paragraph (a) of subsection (6);

(c) he does not, within six months after the date of his registration, produce proof to the satisfaction of the Board that he has been admitted into partnership with a chartered accountant resident and engaged in public practice in Malawi;

(d) he ceases to be a partner of a chartered accountant resident and engaged in public practice in Malawi and does not within six months thereafter produce proof to the satisfaction of the Board that he has been admitted into any other partnership with another chartered accountant resident and engaged in public practice in Malawi; or

(e) he is in partnership with a chartered accountant who has ceased to be engaged in public practice in Malawi or with a person whose registration has been cancelled or has lapsed under or by virtue of any of the provisions of this Act unless he produces proof to the satisfaction of the Board within six months thereafter that such partnership has been dissolved and that he has been admitted into partnership with another chartered accountant resident and engaged in public practice in Malawi.

(6) The registration of any person who is a registered chartered accountant or a diplomate accountant shall lapse if such person—

(a) ceases permanently to reside in Malawi; or

(b) fails within three months after such fee or portion thereof becomes due and payable or within such further period as the Board may in any particular case prescribe to pay any annual fee or portion thereof prescribed under this Act which is payable by him.

(7) Subject to the provisions of subsection (3), the Board shall on application to it in writing register in the appropriate category any person who was previously registered under this Act, if he possesses the prescribed residential qualifications and has paid the prescribed registration fee and any arrear annual fee.

(8) The Board shall, at the written request of any person registered under this Act, remove his name from the register, save that the removal shall not affect any liability incurred by such person prior to the date of such request.

(9) A person who is registered under the provisions of this Part may describe himself as a chartered accountant or as a diplomate accountant, as the case may be, and if registered as a chartered accountant in public practice shall be entitled to describe himself as such and to engage in public practice in Malawi.

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

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

Cancellation
or suspension
of registration

(a) who has ceased to be a member of the Institute;
(b) who has been adjudged or otherwise declared insolvent or bankrupt under a law in force in any country;

(c) who has made an adjustment to or arrangement or composition with his creditors under a law in force in any country;

(d) who has been convicted inside or outside Malawi of a criminal offence which in the opinion of the Board is of a disgraceful or dishonourable nature;

(e) who is certified either inside or outside Malawi to be mentally disordered or defective or of unsound mind under the Mental Treatment Act, or an equivalent law in a foreign country; or

Cap. 34:02

(f) whose membership of his professional body has been cancelled or suspended.

(2) Subject to subsection (4), the Board shall direct the secretary of the Board to cancel the registration of a person as a public auditor if he has ceased to be a member of the Institute.

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

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

(a) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person, as the Board thinks fit; and

(b) pay due regard to any representations made by him under paragraph (a).

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

30.—(1) The Board shall direct the secretary of the Board to restore to the Register the name of a person whose registration was cancelled on the ground referred to in paragraph (a) of subsection (1) of section 29, if the Institute notifies the Board, in writing, that he has become a member of the Institute or has had his membership restored.

Restoration of
registration

(2) The Board shall direct the secretary of the Board to restore to the Register as a chartered accountant or diplomate accountant the name of a person whose registration was cancelled on the ground referred to in subsection (2) of section 29 if the Institute notifies the Board, in writing, that he has become a member of the Institute or has had his membership restored.

(3) A person whose registration has been cancelled under section 29 may apply for his registration to be restored and sections 25 to 27 shall apply, *mutatis mutandis*, as if he were applying for registration.

PART VI—SECRETARIAT OF THE BOARD

Secretary and
other staff of
the Board

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

Disclosure of
interest by
employee, etc.

32.—(1) An employee of the Board or a consultant to the Board who, or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Board, shall disclose such interest.

(2) A disclosure of interest made under this section shall be made to the Secretary or, as the case may be, by the Secretary to the Board who or which shall take such decision as he or it considers appropriate in each case and submit a report thereon to the Board.

Oath of secrecy

33. Every—

- (a) member of the Board;
- (b) member of a committee of the Board;
- (c) employee of the Board; and
- (d) consultant in the service of the Board,

shall, upon assumption of his office, take such oath of secrecy as may be approved by the Board.

Prohibition of
publication or
disclosure of
information by
unauthorized
persons

34.—(1) No person shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, other than in the course of his duties, contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K100,000 and to imprisonment for two years.

35. No action, suit or other proceedings shall be brought or instituted personally against any employee of the Board in respect of any act done in good faith in the course of carrying out the provisions of this Act.

Protection of
employees

PART VII—DISCIPLINE

36. The Institute shall be responsible, in the first instance, for the professional conduct of its members and, for that purpose, the Institute shall have power to undertake disciplinary proceedings against such members and to discipline them.

Disciplinary
proceedings

37.—(1) Where the Institute has found that a member contravened any disciplinary rules as provided for in the By-laws and has been disciplined under section 36, the Institute shall report that fact to the Board in writing within fourteen days and shall provide the Board with information regarding the case.

Review of
disciplinary
proceedings

(2) If, after the thirty-day period specified in section 38, the member concerned has not lodged an appeal under that section, the Board shall forthwith review the decision of the Institute in any case reported to it under subsection (1):

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

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

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

(a) the Institute failed to follow any procedure which it was required to follow in disciplinary proceedings;

(b) the Institute failed to observe the rules of natural justice; or

(c) the decision of the Institute was unreasonable in all the circumstances of the case,

and that a substantial miscarriage of justice occurred.

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

Appeal to the
Board against
disciplinary
action

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

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

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

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

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

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

(8) The Board shall hear and determine appeals from any person aggrieved by a finding of the Institute in relation to improper conduct and make such order as to the costs incurred by it in the hearing such appeals as it may consider equitable.

Suspension of
registered
accountants
who are
mentally
disabled

39.—(1) Whenever it appears to the Board from information on oath that any person registered under this Act has become mentally disabled to such an extent that it would be contrary to the public welfare to allow him to continue to practice or to act as a chartered accountant or as a diplomate accountant, as the case may be, the Board may, if it deems fit, hold an enquiry in respect of such person.

(2) If the Board after due enquiry finds as a fact that such person has become mentally disabled, it may order the suspension of such person for a specified period from practising as a public accountant or from acting as a chartered accountant as the case may be.

(3) The Board may order the extension of the period of operation of any order made under this section or may order its revocation.

PART VIII—THE INSTITUTE

40. The Institute shall—

Objectives of
the Institute

- (a) promote the development of the accounting profession;
- (b) supervise the accountancy profession in the public interest;
- (c) promote the highest standards of professional ethics and business conduct of, and enhance the quality of services offered by, chartered accountants or diplomate accountants;
- (d) protect the public interest by ensuring that members of the Institute observe the highest standards of professional and ethical conduct;
- (e) ensure the professional independence of accountants;
- (f) determine the eligibility criteria to become a member of the Institute;
- (g) arrange for the assessment of candidates seeking certification as members;
- (h) promote, maintain and increase the knowledge, skills and competence of members of the Institute and students;
- (i) ensure that members of the Institute obtain the necessary technical and ethical guidance that enables them to meet the needs of the community in areas in which they have special knowledge and expertise;
- (j) maintain and monitor high quality practical training at all levels of the profession;
- (k) seek public recognition of a broad range of skilled services that chartered accountants or diplomate accountants and accounting technicians can provide;
- (l) promote and protect the objectives and sustainability of the Institute and of the accounting profession;
- (m) maintain the legitimate professional rights of members of the Institute;
- (n) advance the theory and practice of accountancy in all aspects;
- (o) develop and maintain effective working relationships with Government and other national, regional and international accountancy bodies;
- (p) promote high quality accounting, auditing and financial reporting standards and practices;
- (q) develop professional qualifications for accountants and auditors in Malawi;

(r) keep abreast of international developments affecting the accounting profession; and

(s) protect the interests of its members.

Functions of
the Institute

41. The Institute shall, subject to this Act and to the general or special directions of the Board, undertake diligently the following functions or any of such functions—

(a) the continuous review and dissemination to its members and others of information concerning international and internal developments in technical matters affecting the profession of accounting and auditing;

(b) the setting of accounting and auditing standards appropriate to conditions prevailing in Malawi, and to the continued international acceptance of audited financial statements originating in Malawi;

(c) advising the Board and the College on any matters referred to it;

(d) the carrying out of research into matters affecting the profession;

(e) the provision of continuing professional education for its members, and monitoring compliance;

(f) the definition and enforcement of ethical practice and discipline among its members;

(g) the issuing, renewal and withdrawal of practising certificates to its members carrying on public practice;

(h) the registration of student members;

(i) the prescription of regulations for the protection of client funds held by its members, and for the due performance of professional obligations;

(j) the disciplining of its members and registered students and trainees;

(k) the appointment of its representatives required under the provisions of this Act;

(l) determining the syllabus to be followed by institutions charged with the training of those desirous of qualifying for registration under this Act, taking fully into account the need for the integration of the syllabus for qualification as a diplomate accountant with the syllabus for qualification as a chartered accountant;

(m) setting the examinations for those desirous of qualifying for registration under this Act;

(n) coordinating the marking and adjudication of the examinations set in pursuance of the provisions of paragraph (m);

(o) reviewing the academic syllabus of examinations followed by academic or professional institutions other than those referred to in paragraph (l) with a view to the establishment of exemptions from the examinations prescribed in paragraph (m);

(p) ensuring, through liaison with other professional bodies of accountants of high standing, that the examination and marking standards applied by the Institute are acceptable as of equal academic standing to those applied by the other bodies;

(q) liaising with and advising the Minister, the Board and the College on matters relating to the training of accountants and the requisite qualifications for the registration of accountants;

(r) promoting issues of good corporate governance in Malawi;

(s) performing such other functions relating to the training of accountants and the requisite qualifications for the registration of accountants;

(t) evaluating and monitoring the standards of qualifying courses and training set or offered by the College or any other institution in consultation with the Institute;

(u) performing such other functions relating to the training of accountants and auditors as the Board may, from time to time, direct;

(v) laying down the requirements for different classes of its membership;

(w) considering any application for registration made under this Act for different classes of its membership;

(x) registering persons as members of the Institute who qualify to be chartered accountants or diplomate accountants, chartered accountants in public practice, student members, or such other class of membership as the Institute may establish;

(y) overseeing, monitoring and supervising the qualifications and selection of mentors of practical training programs;

(z) inquiring into any written complaint made against any chartered accountant, or diplomate accountant, either on its own initiative or at the request of any person, for violations or breaches of its codes, rules and standards, in accordance with the rules of the Institute;

(aa) implementing a sound system of quality assurance review mechanism to ensure high quality audit practice;

(bb) recognizing any accountancy qualifications that are, in the opinion of the Board, equivalent to those of the Institute;

(cc) representing members' interests in local, regional and international forums;

(dd) improving the quality of professional services offered by its members; and

(ee) performing such other duties or functions as it deems necessary to promote the highest professional standards among its members.

Powers of
the Institute

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

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

(a) cooperate with, or become a member or an affiliate of, any international body, the objects or functions of which are similar to or connected with those of the Institute;

(b) impose and collect such penalties, fees and fines as may be required under this Act and the rules of the Institute;

(c) levy such charges or fees as may be reasonable for services and facilities provided by the Institute;

(d) issue rules and guidelines related to the examinations and qualifications of the Institute;

(e) issue rules and guidelines related to membership in the Institute, including the acceptance, rejection, withdrawal, suspension, cancellation or renewal of membership; and

(f) conduct any inquiry or investigation, or collect information, documents or evidence, for the purpose of carrying out its functions, including disciplinary actions against its members.

(3) The Institute shall have the power to accept delegations of the Board's functions.

PART IX—PRACTISING CERTIFICATE

Prohibition
against
practice
without
practising
certificate

43.—(1) No person shall practice or hold himself out as a chartered accountant in public practice whether directly or indirectly, by himself or in partnership or association with any other person, except in accordance with the terms and conditions of a valid practising certificate issued by the Institute and registered by the Board.

(2) Subsection (1) shall not apply to anything done by a registered person which he could lawfully do as an unregistered person under section 52.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine of K100, 000 and imprisonment for two years.

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

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

Application
for practicing
certificate

45.—(1) On receipt of an application for a practising certificate under section 44, the Institute shall issue a practicing certificate to the applicant authorising him to practice as a chartered accountant in public practice if the Institute is satisfied that the applicant—

Issue or
refusal of
practicing
certificate

(a) is a chartered accountant; and

(b) is a member in good standing with the Institute.

(2) If the Institute is not satisfied as provided for in subsection (1), it shall refuse to issue the practising certificate concerned and shall—

(a) advise the applicant accordingly; and

(b) subject the applicant to practice reviews at such a time and in such a manner as the Institute may prescribe.

46.—(1) No person shall, unless he is registered by the Board as a chartered accountant in public practice—

Unregistered
person
prohibited
from
practicing

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

(b) do anything likely to lead persons to infer that he is a chartered accountant in public practice.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K100,000 and to imprisonment for two years.

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

Period of
validity of
practicing
certificate

(2) A practising certificate which authorises its holder to practise as a chartered accountant shall cease to be valid if its holder is deregistered by the Institute in which case the certificate shall immediately be returned to the Institute.

Withdrawal of
practicing
certificate

48.—(1) If, after due enquiry, the Institute is satisfied that a chartered accountant in public practice has not complied with any term or condition of a practising certificate held by him, the Institute may withdraw the practising certificate and, if it does so, the Institute shall advise the chartered accountant accordingly.

(2) Where a practising certificate is withdrawn, the Board shall publish a notice in the Gazette notifying the public of such withdrawal.

Surrender of
withdrawn or
invalid
practicing
certificate

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

PART X—MISCELLANEOUS

Use of certain
designations

50.—(1) A chartered accountant shall be entitled to use the designation "Chartered Accountant (Malawi)" or the initials "C.A.(M)".

(2) A diplomate accountant shall be entitled to use the designation "Diplomate Accountant (Malawi)" or the initials "Dip. A.(M)".

Offences of
unregistered
persons

51.—(1) Subject to section 53 and any other enactment, no person other than a chartered accountant shall—

(a) hold himself out to be a chartered accountant; or

(b) use the designation or initials referred to in subsections (1) and (2) of section 50 or any other name, title, description or letters indicating that he is a chartered accountant or diplomate accountant, whether by advertisement or description or in any document.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K200,000 and imprisonment for three years.

(3) A conviction for an offence under subsection (2) shall not be a bar to a further prosecution or conviction if the offence continues.

Offences and
penalties

52.—(1) No person who is registered as a chartered accountant in public practice under this Act shall—

(a) except with the consent of the Institute, knowingly employ in connection with his practice—

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

(ii) any person not registered as a chartered accountant in public practice under this Act who was previously so registered; or

(iii) any person not registered under this Act whom the Board has refused to register;

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

(c) share profits derived from his practice as a chartered accountant in public practice in Malawi, or practice in Malawi in partnership, with any person not registered as a chartered accountant in public practice under the provisions of this Act;

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

(i) his present forenames or the initials thereof and his present surname;

(ii) the present forenames or the initials thereof and the present surnames of his partners, if any; and

(iii) if any such partner is not resident in Malawi, a statement of that fact;

(e) sign any account, statement, report or other document which purports to represent work performed by him, unless such work was performed by himself or under his personal supervision or direction or by or under the personal supervision or direction of one or more of his partners:

Provided that the provisions of this paragraph shall not apply in respect of work performed on behalf of a person registered as a chartered accountant in public practice under this Act by another chartered accountant in public practice so registered or in respect of work performed outside Malawi by a member of a recognized body of professional accountants outside Malawi whose status, in the opinion of the Board, is at least equal to that demanded by the Board for the profession in Malawi:

Provided further that nothing in this paragraph shall be deemed to prevent any person registered as a chartered accountant in public practice under this Act from signing the firm name or title under which he practices;

(f) perform professional work in connection with any matter which is the subject of an application for finance, dispute or litigation on condition that payment for such work shall be made

only if such application, dispute or litigation ends favourably for the party for whom such work is performed;

(g) engage in public practice during any period in respect of which he has been suspended from practice; or

(h) engage in public practice without carrying such professional indemnity insurance as may have been prescribed by the Institute.

(2) A person who contravenes any provision of this section commits an offence and is liable to a fine of K100,000 and imprisonment for two years.

Exemptions

53.—(1) Section 52 shall not prevent a person who, without receiving any fee or reward, prepares or reports on the accounts of a club, society, institute or other association not established for the acquisition of gain, from describing himself as an honorary auditor in relation to the preparation of or reporting on such accounts.

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

(a) a registered chartered accountant in public practice; or

(b) a partnership referred to in subsection (4),

shall not be regarded as practising as a chartered accountant in public practice or as holding himself out to be a registered chartered accountant in public practice for the purposes of section 52 in respect of anything done in the course of such employment while under the direction and control of a registered chartered accountant in private practice.

(3) Section 52 shall not apply to any person in the full-time employment of the Government in respect of anything done by him in the course of such employment.

(4) Notwithstanding section 52, a partnership whose partners—

(a) are registered chartered accountants in public practice;

(b) hold practising certificates; and

(c) directly manage the provision of accounting or auditing services by the partnership,

may practice as though it were a chartered accountant in public practice.

Appeals from
decisions of
the Board

54.—(1) A person who is aggrieved by any decision of the Board made under Parts V and VII may, within thirty days after being advised of such decision, appeal to the High Court in such manner as may be prescribed.

(2) In an appeal under subsection (1), the High Court may—

- (a) confirm, vary or set aside the decision appealed against; or
- (b) remit the matter to the Board for further consideration and may make such other order, whether as to costs or otherwise, as the High Court thinks just.

(3) The lodging of an appeal under subsection (1) against a decision of the Institute to withdraw a practising certificate shall not set aside the decision appealed against, unless—

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

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

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

(2) A certificate purporting to be signed by the Institute to the effect that—

(a) the name of a person appears in any specified part of the Register, shall be prima facie proof that the person is registered as a chartered accountant in public practice or a chartered accountant or a diplomate accountant, as the case may be;

(b) the name of a person has been deleted or removed from or does not appear in the Register or any specified part thereof, shall be prima facie proof that the person is not registered as a chartered accountant in public practice or a chartered accountant or a diplomate accountant, as the case may be; and

(c) a registered person has been suspended from practice for a specified period, shall be prima facie proof that he has been suspended for that period.

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

56.—(1) Subject to subsection (2), the Board may make By-laws By-laws prescribing anything which under this Act is required to be prescribed or which, in the Board's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such By-laws may provide for—

(a) fees which shall be payable in connection with registration, the issue of certificates and anything else issued or done under this Act;

(b) the issue of duplicate, corrected or amended certificates of registration;

(c) the form of the Register and the circumstances in which it may be inspected by members of the public;

(d) the levies payable by the Institute to the Board;

(e) the procedure for reviews by and appeals to the Board;

(f) the setting and administration of examinations by the Institute; and

(g) the conduct of financial statements review, and audit practice review in the context of public interest entities.

Regulations

57. Without derogation from the specific powers prescribed in this Act, the Minister, on the recommendation of the Board, may make regulations for the better carrying out of the purposes and provisions of this Act.

Compliance
with the
provisions of
the Public
Finance
Management
Act
Cap. 37:02

58. The Board shall at all times comply with the provisions of Part VIII of the Public Finance Management Act.

Repeal and
savings
Cap. 53:06

59.—(1) The Public Accountants and Auditors Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

PART XI—TRANSITIONAL PROVISIONS

Saving of
existing
appointments
and
membership
Cap. 53:06

60.—(1) Any person who, immediately prior to the commencement of this Act, is a member of the Board established under the Public Accountants and Auditors Act repealed by section 59, shall be deemed to have been appointed in accordance with this Act.

(2) Any person who, immediately prior to the commencement of this Act, is a member of the Public Accountants Examination

Council, shall continue to hold office until the expiry of his term of office or until the Council of the Institute is duly constituted, whichever happens earlier.

61.—(1) Notwithstanding anything contained in this Act, any person who, immediately prior to the commencement of this Act—

Transfer of membership to professional accountancy bodies

(a) is a member in good standing of a professional accountancy body shall, upon providing evidence of such membership to the Institute within three months after the commencement of this Act, be deemed to have been registered as a chartered accountant or diplomate accountant under this Act; or

(b) is offering audit and assurance services to the public, may continue, within a period of six months from the commencement of this Act, to offer such audit and assurance services to the public without being registered as a chartered accountant under this Act,

provided that the person shall, within the six months, be required to apply for registration as a certified auditor in accordance with this Act.

62.—(1) Programmes and courses existing or subsisting at the commencement of this Act with respect to students referred to in subsection (2) (a) shall continue on the same terms and conditions subsisting before the commencement of this Act.

Saving of existing programmes, students and qualifications

(2) Notwithstanding anything contained in this Act, any person who, immediately prior to the commencement of this Act—

(a) is a student of the Public Accountants Examination Council shall, upon providing evidence of being a student to the Institute within three months after the commencement of this Act, be deemed to be a duly registered student with the Institute; or

(b) is a holder of a qualification from the Public Accountants Examination Council shall, upon providing evidence of such qualification to the Institute within three months after the commencement of this Act, be deemed to be a duly qualified person with the Institute.

63.—(1) Any person who, immediately prior to the commencement of this Act is employed by the Board established under the Public Accountants and Auditors Act repealed by section 59 (hereinafter referred to as the "former Board"), shall be deemed to have been transferred to the employment of the Board on the same terms and conditions of service and, for the purpose of determining his rights thereunder, his service shall be regarded as continuous from the date he was appointed by the former Board.

Transfer of employees
Cap. 53:06

(2) Any person who, immediately prior to the commencement of this Act is employed by the Public Accountants Examination Council, shall be deemed to have been transferred to the employment of the Institute on the same terms and conditions of service and, for the purpose of determining his rights thereunder, his service shall be regarded as continuous from the date he was appointed by the Public Accountants Examination Council.

Transfer of
assets,
liabilities, etc.

64.—(1) All property, assets, funds, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the former Board shall, on commencement of this Act, be deemed to have vested in, or to have been acquired, incurred or entered into by, or on behalf of, the Board, and shall become enforceable by, or against, the Board, to the same extent as they were enforceable by or against the former Board.

(2) Where the transfer of any property transferred to or vested in the Board under subsection (1) is required by any written law to be registered, the Board shall, within one year from the commencement of this Act, or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Board or any other person by way of registration fees, stamp or other duties—

(a) make such entries in the appropriate register as shall give effect to the transfer;

(b) where appropriate, issue to the Board a certificate of title or other statutory evidence of ownership of the property, or make such amendments on such certificate or in the appropriate register as may be necessary; and

(c) make any necessary endorsement on any deed or other document as may be presented to such registering authority relating to the title, right or obligation concerned.

(3) All property, assets, funds, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Public Accountants Examination Council shall, on commencement of this Act, be deemed to have vested in, or to have been acquired, incurred or entered into by, or on behalf of, the Institute, and shall become enforceable by, or against, the Institute, to the same extent as they were enforceable by or against the Public Accountants Examination Council.

(4) Where the transfer of any property transferred to or vested in the Institute under subsection (3) is required by any written law to be registered, the Institute shall, within one year from the

commencement of this Act, or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Institute or any other person by way of registration fees, stamp or other duties—

(a) make such entries in the appropriate register as shall give effect to the transfer;

(b) where appropriate, issue to the Institute a certificate of title or other statutory evidence of ownership of the property, or make such amendments on such certificate or in the appropriate register as may be necessary; and

(c) make any necessary endorsement on any deed or other document as may be presented to such registering authority relating to the title, right or obligation concerned.

Passed in Parliament this twenty-second day of May, two thousand and thirteen.

H. H. NJOLOMOLE
for: Clerk of Parliament