

ACCOUNTANTS AND AUDITORS BILL, 2019
EXPLANATORY MEMORANDUM

1. Introduction

- 1.1. The Public Accountants' and Auditors' Act, 1951 (the "PAA Act") commenced on 1 November 1951, having been assented to on 18 June 1951 in pre-Independence Namibia.
- 1.2. The current PAA Act is originally a law of the Republic of South Africa. When Namibia obtained independence in 1990, the Act was adopted as the law of Namibia, and has remained so to-date. The only substantial change to the Act was made by the Parliament of Namibia in 1994 and this was mainly in respect to the composition of, and appointment of members of the Board. No amendments have been made to the Act since 1994.
- 1.3. The purpose of the PAA Act was to provide for the establishment of the Public Accountants' and Auditors' Board ("PAAB") to regulate the accounting and auditing profession. The Act further provided for the registration of public accountants and auditors and for the regulatory and supervisory functions of the PAAB in relation to them.
- 1.4. Having been operationalised for just short of 70 years, it has become necessary and indeed urgent to review the legal framework for the regulation of accountants and auditors in Namibia, especially since many aspects of the PAA Act are outdated. The legal review is therefore important to align the legal framework to contemporary international accounting and auditing standards and practices.
- 1.5. Following extensive consultations both internal to the PAAB and with external stakeholders, including the Office of the Auditor-General and private accountant and auditing firms through their representation on the PAAB and individually, the Accountants and Auditors Bill has been drafted with the aim to repeal the PAA Act, 1951 and to modernise the legal and regulatory framework within which accountants and auditors conduct business in Namibia.
- 1.6. Broadly, the AA Bill is intended to achieve the following objectives:
 - (a) Continue the existence of the Public Accountants' and Auditors' Board as the Accountants' and Auditors' Regulatory Authority of Namibia (hereafter the "AARA");

- (b) Regulate the registration and minimum requirements of accounting technicians, accountants and auditors;
 - (c) Make provision for an accreditation framework for the regulation of accounting technicians, accountants and auditors;
 - (d) Prescribe an appropriate framework for the education and training of properly qualified accounting technicians, accountants and auditors as well as their ongoing competences;
 - (e) Support the growth and transformation, advance the standing and effectiveness and promote the integrity of the accounting and auditing professions;
 - (f) Empower the AARA to prescribe accounting standards and auditing standards which are internationally comparable.
- 1.7. Hereunder is an explanatory summary of the provisions of the Accountants' and Auditors' Bill, 2019 (hereafter the "AA Bill").
2. The AA Bill comprises twelve parts namely-
- 2.1. Part 1- Introductory provisions
 - 2.2. Part 2- Constitution and Governance of Authority
 - 2.3. Part 3- Objectives, Functions and Powers of Board
 - 2.4. Part 4-Staff of Authority
 - 2.5. Part 5-Committees of Board
 - 2.6. Part 6-Finances of Authority
 - 2.7. Part 7- Accreditation of Professional Bodies
 - 2.8. Part 8- Registration of Accounting Technicians, Professional Accountants and Auditors
 - 2.9. Part 9- Cancellation or Suspension of Registration of Registered Person
 - 2.10. Part 10- Specific Provisions Relating to the Provision of Auditing Services
 - 2.11. Part 11- Inspectorate of the Board
 - 2.12. Part 12- Disciplinary Powers of Board

2.13. Part 13- Offences

2.14. Part 14- General Provisions

3. **PART 1- INTRODUCTORY PROVISIONS**

3.1. **Clause 1- Definitions**

3.2. **Accounting profession** denotes the occupation of rendering accounting services.

3.3. **Accounting services** are defined to include-

- the preparation of financial records, returns, statements or information;
- making presentations for clients to third parties regarding accounting or insolvency matters;
- taxation services
- accounting and insolvency advisory services;
- forensic services;
- other assurance and related services relating to accounting advisory services and company statutory services
- other services prescribed by the Board in the *Gazette*.

Rationale: It is important to have a clear description of what the ambit of accounting services is. This definition is not in the PAA Act.

3.4. **Accounting standards** refer to accounting standards prescribed, or applicable international standards adopted, by the Board, while **audit standards** refer to standards for the audit profession, so prescribed or adopted.

Rationale: This definition is required to enable the Board to adopt standards that are comparable internationally.

3.10 **Accredited professional body** refers to a body accredited by the AARA and representing auditors, accountants or accounting technicians or any combination of these categories.

Rationale: Accreditation of professional bodies is an important concept in the Bill and is required for the regulation of the three categories of persons to be regulated under the Bill, namely auditors, accountants and accounting technicians.

3.11 An **audit** refers to an independent examination by a registered auditor in terms of the audit standards of-

- financial statements to express an audit opinion on whether financial statements are prepared in terms of a recognized financial reporting framework;
- financial or other information, to express an opinion thereon.

Rationale: To differentiate auditing from accounting.

3.12 **Auditing pronouncements** is defined as practice statements, guidelines, directives and circulars developed, adopted, issued or prescribed by the Board which a registered auditor must comply with.

Rationale: Auditing pronouncements assist the Authority to assist in the interpretation of international standards by means of practice statements, directives and circulars.

3.13 **Authority** refers to the Accountants' and Auditors' Regulatory Authority.

3.14 **Audit development programme** refers to the Board-required programme of specialisation to enable a person to become a registered auditor.

Rationale: The definition is necessary to identify the requirements for specialisation as an auditor.

3.15 **Auditing profession** denotes the occupation of registered auditors.

3.16 The **Minister** is defined as the Minister responsible for Finance. The **Board** means the Board of the Authority, while **chief executive officer** refers to the Authority's CEO. **Committee** refers to a committee of the Board.

Rationale: Standard governance provisions

- 3.17 A **certificate to practise** refers to a certificate issued by the Authority enabling a person to practice as a registered auditor, registered professional accountant, registered accounting technician or firm. A **registered accounting technician** means a person qualified to offer for hire or reward accounting services. A **registered auditor** means a person qualified to offer for hire or reward audit and accounting services. A registered professional accountant means a person qualified to offer for hire or reward accounting services who is not an accounting technician

Rationale: To stipulate the categories of persons who may be issued with a certificate of practice by the Authority.

- 3.18 **Entity** includes any person or body of persons, whether incorporated or unincorporated.

Rationale: Generic term to capture all categories of persons involved in accounting or auditing.

- 3.19 A **firm** is defined to include a sole proprietor, partnership, close corporation or company.

Rationale: It is important to define this concept as a firm is also entitled to be issued with a certificate to practice.

- 3.20 **IASB** means the International Accounting Standards Board. **IAASB** means the International Auditing and Assurance Standards Board. **IFAC** means the International Federation of Accountants. Related to these concepts is the definition of **international standards** which refer to professional standards, rules or regulations issued by or under the auspices of IASB, IFAC or IAASB.

Rationale: These definitions refer to international bodies responsible for the setting of accounting and auditing standards with which accountants and auditors must comply with.

- 3.21 **Management board** refers to the board of a company or in respect of any other entity, the body or individual responsible for the day-to-day management of the business thereof.

Rationale: This is to ensure that a governance structure is held accountable where a company or other entity is required to be notified in terms of the Bill.

3.22 **Practice review** refers to an inspection or review of the manner in which a registered person carries on public practice or an accredited professional body conducts its business. A **registered person** means a registered auditor, registered professional accountant, registered accounting technician or registered firm, while public practice refers to the provision of auditing or accounting services to the public for reward, excluding services substantially at the command of the State.

Rationale: The Authority must periodically embark upon practice reviews of registered persons in order to discharge its regulatory functions.

3.23 A **reportable irregularity** refers to an unlawful act or omission committed by any person responsible for the management of an entity, which-

- has caused or is likely to cause material financial loss to the entity or to any of its partners, members, shareholders, creditors or investors;
- amounts to fraud or theft or similar dishonest conduct; or
- represents a material breach of any fiduciary duty owed by such person to the entity or to any of its partners, members, shareholders, creditors or investors.

Rationale: This concept is important to define as auditors have a duty to report reportable irregularities to the Authority.

3.24 **Trainee accounting technician and trainee professional accountant** refers to persons registered by an accredited professional body to commence training to become respectively a registered accounting technician or a registered professional accountant, while a **trainee auditor** means a person registered by the Authority to commence training to become a registered auditor.

3.25 A **training contract** is defined to mean a written contract of training whereby a trainee auditor, trainee professional accountant or trainee accounting technician agrees to serve under the pupillage of a training officer to receive training in the practice and profession of these categories of practice. A training officer could include a registered auditor, registered professional accountant or a registered accounting technician depending on who the trainee is.

Rationale: To provide for the registration and training of trainee auditors, trainee professional accountants or trainee accounting technicians.

- 3.26 **Unprofessional conduct** means improper or dishonourable or unworthy conduct or conduct which, if regard is had to any code of professional conduct applicable to the accounting or auditing profession or issued by an accredited professional body is improper or dishonourable or unworthy.

Rationale: The Authority must initiate and conclude disciplinary action in respect of registered persons and therefore this concept must be defined.

3.27 **Clause 2 -Objects of the Bill**

The “Objects” clause describes in synoptic form the rationale for the Bill, being essentially to-

- provide for the continuation, composition, and functions of the AARA;
- provide for accreditation of professional bodies;
- provide for the registration of auditors, professional accountants, accounting technicians and for the issue of certificates of practice;
- ensure the regulation of the audit and accounting professions;
- set rules relating to the practice and accountability of registered persons and procedures for disciplinary action for unprofessional conduct; and
- improve the development and maintenance of internationally comparable ethical standards as well as audit and accounting standards for registered persons

Rationale: An Objects clause is necessary to state in broad terms the rationale for the proposed legislation.

4. **PART 2 – CONSTITUTION AND GOVERNANCE OF AUTHORITY**

4.1. **Clause 3- Continued existence of Public Accountants’ and Auditors’ Board**

This clause provides for the continued existence of the PAAB as the Accountants’ and auditors’ Regulatory Authority (“AARA”), established under the PAA Act, as a juristic person.

Rationale: There is no requirement or policy directive to liquidate the current PAAB and therefore the clause continues the juristic entity without the need for bringing a different entity into existence.

4.2. **Clause 4- Constitution of Board**

- (a) The clause provides that subject to the Public Enterprises Governance Act (“PEGA”) the Board consists of nine non-executive members appointed by the Minister. An appointed person must possess knowledge and at least five years’ experience in public practice, corporate governance, finance, economics, law or other related fields of expertise.
- (b) The Board must have no more than one registered auditor, one registered professional accountant and one registered accounting technician.

Rationale: These are important provisions necessary for the governance of the Board.

4.3. **Clause 5- Terms of office of Board members**

Members are to be appointed for a term of 3 years and may be reappointed for only one successive term. The Minister must, after expiry of the term of office of the Board members reappoint at least three appointed members.

Rationale: These are standard provisions setting out terms of office.

4.4. **Clause 6- Disqualification for membership of Board**

This clause following legislative drafting convention, provides for the circumstances under which a Board member is expected to vacate office.

4.5. **Clause 7- Vacation of office and filling of vacancies**

This clause provides for the manner in which a vacancy in the office of a Board member must be filled.

4.6. **Clause 8- Chairperson and deputy chairperson**

The Board must out of their number elect a chairperson and deputy chairperson. If he or she vacates office, the Board must elect a replacement.

4.7. **Clause 9 – Remuneration and allowances of members of Board and committees**

The Minister determines the allowances or remuneration that must be paid out of the funds of the Authority to Board and committee members.

4.8. **Clause 10 – Meetings of Board**

- (a) The clause provides that the Board must meet at least quarterly at its offices. A special meeting may also be convened.
- (b) The majority of Board members constitutes a quorum at their respective meetings, while a decision of the majority of members present at such meeting is required to make a valid decision.

4.9. **Clause 11- Minutes of meetings**

The Board and its committees must keep minutes of its meetings and submit copies of the minutes to its members within 14 days of the meetings, signed by the chairperson presiding at that particular meeting as to the correctness of the content thereof.

4.10. **Clause 12- Conduct of members and disclosure of interests**

This clause makes it obligatory for Board and committee members, the CEO and staff as well as persons attending meetings of the Board or any of its committees to declare interests conflicting with the interests of the Authority.

Rationale: This is in line with ethical standards and the fiduciary duty upon particularly commissioners and committee members but generally on all persons involved in the business of the Commission.

4.11. **Clause 13- Delegation and assignment of powers and functions by Board**

The Board is required to develop a delegation framework to maximise its administrative and operational efficiency and provide for adequate checks and balances.

Rationale: This is a standard clause necessary to create an enabling provision for the delegation of functions, duties and powers.

PART 3- OBJECTIVES, FUNCTIONS AND POWERS OF AUTHORITY

4.12. **Clause 14- Objectives of Authority**

The Authority must-

- (a) to regulate the reporting of financial information and to provide direct oversight over registered persons and accredited professional bodies;
- (b) to regulate the accounting and auditing professions;
- (c) to advise the Minister in relation to any matter affecting the accounting and auditing professions;
- (d) to promote the standard, quality and credibility of the accounting and auditing professions;
- (e) to monitor and adopt international best practice for the development of the accounting and auditing professions.

4.13. **Clause 15- General functions and powers of the Authority**

The clause provides for the general functions and powers of the Authority more particularly relating to its administration, entering into agreements, appointment of staff and Board committees, interaction with Government etc.

4.14. **Clause 16- Functions with regard to accreditation of professional bodies**

The Board is required to-

- prescribe minimum requirements for accreditation of professional bodies

- consider and decide on any application for accreditation
- prescribe the period of validity of the accreditation
- keep and maintain a register of accredited professional bodies
- terminate the accreditation of accredited professional bodies

4.15. Clause 17- Functions with regard to education, training and professional development

In terms of this clause the Board must recognize by notice in the *Gazette* tertiary institutions or accredited professional bodies that may provide academic and theoretical training for persons desirous of becoming registered auditors, registered professional accountants or registered accounting technicians. The Board must also recommend the adoption of any syllabus, educational requirement or examination structure, which in the opinion of the Board, is necessary or desirable to maintain or enhance the professional standard, education, training or professional development. The Board must also prescribe qualifying examinations for trainee auditors and trainee accountants and accounting technicians. The Board may also fully or partially withdraw the recognition of any tertiary institution or accredited professional body to provide education or training.

4.16. Clause 18- Functions of the Board with regard to registration of auditors, professional accountants, accounting technicians and firms

In terms of this clause the Board-

- may prescribe competency standards and requirements for registration of auditors, professional accountants or accounting technicians;
- must consider and decide on any application for registration;
- must keep and maintain a register of the different categories of registered persons; and
- may cancel or suspend the registration of registered persons.

4.17. Clause 19- Functions of Board with regard to professional standards

This clause requires the Board to –

- prescribe and review accounting and auditing standards;

- adopt applicable international standards;
- assess the methods and procedures of registered persons in carrying out public practice;
- monitor compliance with accounting and auditing standards;
- develop technical resources to assist in the implementation of international standards;
- prescribe guidelines and rules to govern quality assurance programmes;
- conduct or arrange periodic practice reviews;
- issue auditing pronouncements;
- solicit and submit comments on draft international standards and other pronouncements of IASB, IAASB or IFAC

4.18. **Clause 20- Functions of the Board with regard to discipline**

In terms of this clause the Board must establish investigative and disciplinary proceedings relating to allegations of unprofessional conduct and impose sanctions where appropriate.

4.19. **Clause 21-Functions with regard to fees and charges**

The Board must prescribe fees for accreditation, registration and the issue of certificates to practise and the date on which any fee is payable.

Rationale: *The functions of the Authority and its governance board must be spelled out with sufficient clarity to provide the enabling framework in which the Authority must operate. As the Authority and its Board are creatures of statute, whatever function or power is not specified in the statute may not be exercised in accordance with the legal doctrine that a statutory entity may not exceed the powers granted by the establishing statute.*

4.20. PART 4- STAFF OF AUTHORITY

4.21. **Clause 22- Chief executive officer**

- (a) The Board must with the agreement of the Minister appoints a suitably qualified person as CEO. The person must have qualifications, knowledge and expertise directly relevant to the administration and functions of the Commission and must be of high moral character and proven integrity.

- (b) The CEO is appointed for a term of five years in accordance with a performance agreement and is eligible for reappointment at the expiry of the term.
- (c) The clause further sets out the manner in which the CEO may be removed from office and the manner in which a vacancy may be filled, including in an acting capacity.

Rationale: Standard provisions pertaining to the appointment of a CEO and removal from office.

4.22. **Clause 23-Functions of chief executive officer**

The chief executive officer is the accounting officer of the Authority responsible for its daily operations. are described in more detail under clause 23, particularly to make that office explicitly responsible for –

- (a) the implementation of the decisions, policies and programmes of the Authority;
- (b) the proper management of the funds and property of the Authority;
- (c) the organisation and control of the staff of the Authority;
- (d) the development of an economic, efficient and cost-effective internal management structure; and
- (e) proposing and implementing the strategic plan, business plan and annual plan of the Authority.

Rationale: Standard governance provision, which is aligned with more recent statutes dealing with the functions of chief executive officers.

4.23. **Clause 24- Other officers and employees of Authority**

This clause provides for the appointment of employees of the Authority.

Rationale: Standard provisions for the employment of staff of the Commission

4.24. **Clause 25- Consultants**

In terms of this clause, the Board may engage expert advisers as may be useful or appropriate to enable the Board to discharge its functions.

5. PART 5- COMMITTEES OF BOARD

5.1. **Clause 26- Establishment of committees**

This clause allows the Board to establish any number of committees to assist it in carrying out its duties. Specific standing committees must be established, namely:

- education, training and professional development committee;
- registration and accreditation committee;
- standards committee;
- inspection and quality assurance committee;
- ethics committee;
- investigation committee; and
- disciplinary committee.

Rationale: The Authority is required to perform its regulatory and supervisory functions mainly through its standing committees assisted by permanent staff members.

5.2. **Clause 27- Education, training and professional development committee**

The education, training and professional development committee must assist the Board to perform all its functions related to the education, training, practical experience requirements and continuing professional development of registered persons.

5.3. **Clause 28- Registration and accreditation committee**

The registration and accreditation committee must assist the Board to perform all its functions related to the registration of auditors, professional accountants, accounting technicians and firms and the accreditation of professional bodies.

5.4. **Clause 29- Ethics committee**

The ethics committee must assist the Board-

- to determine what constitutes unprofessional conduct by registered persons by developing a code of professional conduct;
- to consider and approve the code of ethics and disciplinary rules that every accredited professional body must issue for its members;
- to provide advice to accredited professional bodies or registered persons on matters of professional ethics and conduct

5.5. **Clause 30- Standards committee**

The standards committee must assist the Board to-

- develop, amend or improve accounting and auditing standards and to make appropriate recommendations to the Board on the standards;
- adopt international standards applicable to the accounting and auditing professions;
- develop, amend, improve or adopt accounting and auditing pronouncements;
- consider relevant changes to international standards and provide advice and recommendations to the Board regarding such changes; and
- promote and ensure the relevance of auditing pronouncements.

5.6. **Clause 31- Inspection and quality assurance committee**

The inspection and quality assurance committee must-

- conduct or supervise periodic practice reviews; and
- determine, when conducting or supervising a practice review, if a registered person has complied with the code of professional conduct and applicable accounting or auditing standards, or an accredited professional body complies with this Act.

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5.7. **Clause 32- Investigation committee**

The investigation committee must investigate allegations of unprofessional conduct involving registered persons or contraventions of the Act by accredited professional bodies.

5.8. Clause 33- Disciplinary committee

The disciplinary committee must consider any findings and recommendations referred to it by the Board and take the appropriate action prescribed in rules issued by the Board. The disciplinary committee must be chaired by a retired judge or a legal practitioner with at 10 years of experience.

6. PART 6- FINANCES OF AUTHORITY

6.1. Clause 34- Funds of Authority

This clause stipulates where the funds of the Authority would come from, including from budget allocations by Parliament, fees and fines payable in terms of the proposed law, interest, donations and loans.

6.2. Clause 35- Bank accounts of Authority

The Authority is required to open any number of bank accounts necessary for the performance of the functions of the Authority. One account must be designated the main bank account of the Authority.

6.3. Clause 36- Financial year, accounts and audit of Authority

The financial year of the Authority ends on 31 December of every year. The clause also provides for the preparation of financial statements of the Authority and the auditing thereof by by the Auditor-General who may appoint any independent registered auditor to perform such audit.

6.4. Clause 37- Reports to and meetings with Minister

This clause regulates the preparation of and submission of annual financial statements and reports to the Minister including annual reports in accordance with the Public Enterprises Governance Act

and periodic reports as may be requested by the Minister. The annual report must be tabled in the National Assembly. Provision is also made for periodic meetings of the Authority with the Minister.

7. PART 7- ACCREDITATION OF PROFESSIONAL BODIES

7.1. **Clause 38- Application for accreditation**

A professional body seeking accreditation must apply to the Authority for accreditation. If the applicant complies with the prescribed requirements the Board must grant the application. An accredited professional body must be entered on the relevant register.

Rationale: The accreditation of professional bodies is an important pillar of the proposed law and the manner in which a body must apply for such accreditation should be set out in the Bill.

7.2. **Clause 39- General requirements for accreditation**

An applicant for accreditation must demonstrate that amongst others it -

- meets the requirements prescribed by the Board for the education, training, and professional development, and the achievement of professional competence by its members
- has or will issue a code of ethics and disciplinary rules approved by the Board
- has mechanisms to ensure that its members are disciplined;
- will have a register of its members in the form prescribed by the Board;
- has programmes and structures to ensure that it is actively endeavouring to achieve the objective of being representative of all sectors of the Namibian population.

Rationale: The provisions enabling the Authority to prescribe accreditation criteria must be spelled out in the proposed law.

7.3. **Clause 40- Retaining accreditation**

To retain accreditation, an accredited professional body must every five years satisfy the Board that it complies with the general requirements for accreditation.

Rationale: To ensure that accredited professional bodies remain compliant with the proposed law.

7.4. **Clause 41- Cancellation of accreditation**

This clause sets out the circumstances in which the Board may cancel the accreditation of a professional body.

It also stipulates that the Board must inform members of a professional body whose accreditation was cancelled that they should become members of another accredited professional body.

Rationale: The Authority is enabled to cancel the accreditation of professional bodies as an incidence of its regulatory powers and oversight.

7.5. **Clause 42- Effect of cancellation of accreditation on registered person**

The cancellation of accreditation of a professional body does not affect the registration of a registered auditor, registered professional accountant, registered accounting technician or firm which was a member of that professional body. However, such registered person must within six months of the cancellation of the accreditation of the professional body or within a prescribed period provide written proof that he, she or it has become a member of another accredited professional body.

Rationale: The clause regulates the incidence of cancellation of the accreditation of a professional body on its members.

8. **PART 8- REGISTRATION OF ACCOUNTING TECHNICIANS, PROFESSIONAL ACCOUNTANTS AND AUDITORS**

8.1. **Clause 43- Definitions**

- (a) For purposes of Part 8, an **applicant** refers to an individual who applies for registration including a trainee accounting technician, trainee professional accountant, trainee auditor, registered accounting technician, registered professional accountant or registered auditor.

(b) A **member in good standing** is defined to mean a member of an accredited professional body or similar body in a foreign country who-

- does not owe any membership fees or other dues to such body;
- is not subject to a disciplinary proceeding by the Authority or by such body; and
- complies with requirements relating to continuing professional development.

Rationale: These definitions are necessary for ease of understanding and brevity.

8.2. **Clause 44- Registration of individual as trainee professional accountant or trainee accounting technician**

An applicant desiring to be registered as a trainee accounting technician or trainee professional accountant must apply to an accredited professional body on the prescribed form and accompanied by the prescribed fee. If the accredited professional body is satisfied that the applicant meets the statutory requirements, it must give written approval to the applicant to commence with training under a training contract.

Rationale: The Bill proposes a tiered approach to the regulation of accountants, auditors and accounting technicians where auditors are regulated directly by the Authority, while professional accountants and accounting technicians are supervised by the Authority through their professional bodies, which in turn are directly regulated by the Authority. The clause makes provision for approvals to commence training as professional accountants and accounting technicians to come from accredited professional bodies.

8.3. **Clause 45- Registration of individual as accounting technician**

This clause provides that if the Board is satisfied that an applicant meets the statutory requirements, it must register the applicant as a registered accounting technician and issue to him or her a certificate to practice.

Rationale: The Authority is enabled to exercise direct oversight in that only the Board may issue a certificate to practise to an accounting technician.

8.4. **Clause 46- Registration of individual as professional accountant**

In terms of this clause, if the Board is satisfied that an applicant meets the statutory requirements, it must register the applicant as a registered professional accountant and, issue to him or her a certificate to practice.

Rationale: The Authority is enabled to exercise direct oversight in that only the Board may issue a certificate to practise to professional accountant.

8.5. **Clause 47- Registration of trainee auditor**

An applicant desiring to be registered as a trainee has to apply to the Board who must give written approval to the applicant to commence with training under a training contract if satisfied that the applicant meets the requirements to commence training.

Rationale: In terms of the proposed tiered approach, only the Board may register a person as a trainee auditor.

8.6. **Clause 48- Registration of individual as auditor**

If the Board is satisfied that an applicant meets the statutory requirements, it must register the applicant as a registered auditor and issue to him or her a certificate to practice.

Rationale: As part of its regulatory powers, only the Board may issue a certificate to practise to an auditor.

8.7. **Clause 49- Registration of individual who practised in foreign country as a registered auditor or registered professional accountant or registered accounting technician**

A person who practised in a foreign country as an auditor, professional accountant or accounting technician, who was registered with a registering authority similar to the Authority and wants to continue to practise, must apply to the Authority for registration.

If the Board is satisfied that an applicant meets the statutory requirements it must register the applicant as an auditor, professional accountant, or accounting technician, as the case may be, and issue to him or her a certificate to practise

Rationale: The clause enables the Board to allow persons who practiced in foreign jurisdictions to obtain registration in Namibia.

8.8. Clause 50- Registration of firms as registered auditors, registered professional accountants or registered accounting technicians

This clause provides that firms (including sole proprietorships, partnerships and companies) may also be registered as auditors, professional accountants or accounting technicians and sets out the requirements for registration.

Rationale: The registration of firms as auditors, professional accountants or accounting technicians are aligned with the practice in comparable jurisdictions and ensures that the Authority is enabled to exercise regulatory oversight over such corporate entities.

8.9. Clause 51- Registration of company as registered auditor or registered professional accountant

The requirements for a private company to be registered as an auditor or professional accountant are stipulated by this clause. The Board is required to register a private company as an auditor or professional accountant and issue to the company a certificate to practise if the applicant complies with those requirements.

Rationale: The clause creates a special regime for private companies to be registered as auditors or professional accountants.

8.10. Clause 52- Disqualifications for registration

This clause spells out the factors that disqualify an individual to be registered as a trainee accounting technician, trainee professional accountant, trainee auditor, accounting technician, professional accountant or auditor, as the case may be.

Rationale: In line with its regulatory powers the Authority is enabled to refuse to register a person if he or she are subject to any of the disqualification criteria.

8.11. **Clause 53- Certificate to practise**

A certificate to practise must be issued in the form and manner and subject to the terms and conditions, prescribed by the Board. A certificate to practise is valid for a period of five years and may be renewed on application.

Rationale: The Authority, as the entity responsible for registering auditors, professional accountants or accounting technicians is enabled to also prescribe the form and manner in which the certificate to practise must be issued together with the applicable conditions.

8.12. **Clause 54- Prohibition on holding out or practising as a registered auditor, registered professional accountant or registered accounting technician unless registered**

In terms of this clause, a registered person who engages in public practice contrary to the terms and conditions of a certificate to practise commits an offence. The same applies to a person who without being registered offers accounting or auditing services in public practice or holds himself, herself or itself out to be a registered person.

Rationale: This clause is intended to criminalise conduct of a registered person who practices contrary to a certificate to practise or an unregistered person who purports to practice without being issued with such certificate.

8.13. **Clause 55- Register of registered persons and accredited professional bodies**

The Authority is required to keep registers in respect of registered auditors, registered professional accountants, registered accounting technicians, firms and accredited professional bodies and must annotate those registers when required

Rationale: The creation of a registry is an important tool to assist the Authority to carry out its functions and powers.

8.14. **Clause 56- Duty to report change in particulars**

A registered person has to notify the Authority, whenever there is any change in name or other particulars recorded in the register for such person, within 30 days of such change.

Rationale: To enable the Authority to keep track of changes in the particulars of registered persons.

8.15. **Clause 57- Use of certain designations**

A registered auditor may use the designation “Registered Auditor (Namibia)” or the initials “R.A. (Nam)”. A registered professional accountant may use the designation “Registered Professional Accountant (Namibia)” or the initials “R.P. Acc.(Nam)”. A registered accounting technician may use the designation “Registered Accounting Technician (Namibia)” or the initials “A.T. (Nam).

8.16. **Clause 58- Annual fee**

A registered person must pay an annual fee prescribed by the Board to the Authority. The Board may prescribe different amounts for different categories of registered persons.

Rationale: This is part of the funding arrangement for the Authority in carrying out its regulatory duties and is based on the cost of regulation

9. **PART 9 - CANCELLATION OR SUSPENSION OF REGISTRATION OF REGISTERED PERSON**

9.1. **Clause 59- Suspension or cancellation of registration**

The Board may suspend or cancel the registration of a registered person, under the circumstances set out in the clause, for instance where the person obtained registration by fraud, misrepresentation or in error, or the person is convicted of unprofessional conduct. Prior to cancelling or suspending the registration of a person, the Board must apply the rules of natural justice.

Rationale: This is part of the regulatory powers of the Authority to ensure compliance with the provisions of the proposed law.

9.2. **Clause 60- No practise during period of suspension**

A registered person may not engage in public practice during any period in respect of which the registered person is suspended. Contravention is a criminal offence.

Rationale: Standard provision

9.3. **Clause 61- Restoration of name to register**

The clause sets out the circumstances in which a registered person's name may be restored by the Board to the relevant register in which such name is registered.

Rationale: This is to ensure fairness.

10. **PART 10 - SPECIFIC PROVISIONS RELATING TO THE PROVISION OF AUDITING SERVICES**

10.1. **Clause 62- Rules relating to conduct of an audit**

In terms of this clause a registered auditor may not-

- sign any audit opinion, account, statement, report or other document which purports to represent an audit performed by that auditor, unless the audit was performed by that auditor or under his or her personal supervision or direction, or that of one or more of the partners or co-directors of the auditor, as the case may be;
- perform audits unless the auditor has adequate risk management practices and procedures in place;
- engage in public practice during any period in respect of which he she is suspended from public practice; or
- share any profit derived from performing an audit with a person that is not a registered auditor.

Rationale: Audits are specific and technical engagements of professionals specifically trained for that purpose and the clause ensures that this specialisation is retained and not delegated to persons not suitably qualified.

10.2. **Clause 63- Duties in relation to audit**

- (a) Where an auditor that is a firm is appointed to perform an audit, that firm must forthwith assign an individual registered auditor or registered auditors within the firm to be responsible and accountable for that audit.
- (b) Before an auditor expresses an opinion that a financial statement or supplementary information attached thereto fairly presents in all material respects the financial position of an entity and the results of its operations and cash flow; and are properly prepared in all material aspects according to the basis of the accounting and financial reporting framework as disclosed in the relevant financial statements the auditor must be satisfied that-
- that the audit has been carried out free from any restrictions and in compliance with applicable auditing pronouncements;
 - that the financial statements present fairly in all material respects the financial position performance and cash flows of the entity being audited;
 - that proper accounting records have been kept in connection with the entity;
 - he or she obtained all necessary information necessary for the proper performance of the his or her duties;
 - there were no reportable irregularities in respect of the entity;
 - he or she has complied with all laws relating to the audit of that entity

Rationale: This provision sets out the specialised duties of the registered auditor in relation to auditing of an entity.

10.3. **Clause 64- Duty to report on irregularities**

In terms of this provision a registered auditor has the duty to notify the Authority of reportable irregularities discovered in the course and scope of an audit. The auditor must also inform the entity being audited and allow the members of the management board to make representations regarding

the irregularity. If after such representations the auditor is convinced the irregularity is continuing, he or she must inform the Authority, and it must then take the appropriate action.

Rationale: This is part of the key functions of the auditor in carrying out an audit.

10.4. **Clause 65- Limitation of liability of registered auditor**

An auditor does not incur liability in respect of any opinion expressed or report or statement made by him or her in the ordinary course of duties, unless it is proved that the opinion was expressed, or the report or statement was made maliciously, fraudulently or pursuant to a negligent performance of the auditor's duties. Provision is further made for joint and several liability where an auditor and other parties were found to be contributory negligent. Furthermore, an auditor may incur liability to any partner, member, shareholder, creditor or investor of an entity if that auditor negligently fails to report a reportable irregularity.

Rationale: The liability of auditors is subject to whether they acted maliciously, fraudulently or negligently and the provision is aimed at shielding them when they perform their duties in good faith.

11. PART 11- INSPECTORATE OF THE AUTHORITY

11.1. **Clause 66- Inspection programme in respect of registered persons**

This clause requires the Board to establish a practice review programme for the periodic practice reviews of registered persons and accredited professional bodies.

The inspection and quality assurance committee administers the practice review programme.

Rationale: The practice review programme of the Board is an important regulatory tool to ensure compliance with the provisions of the proposed law.

11.2. **Clause 67- Appointment of inspectors and special investigators**

The Board may appoint inspectors to constitute its inspectorate and they must be issued with certificates of appointment, which must be produced when an inspector performs powers under the law. The Board may also appoint special investigators to investigate contraventions of the law.

Rationale: The inspectors and special investigators are the officials through which the Authority carries out its regulatory powers particularly relating to compliance and allegations of contraventions of the law.

11.3. **Clause 68- Practice reviews**

In terms of this clause the inspection and quality assurance committee may at any time conduct, or direct an inspector to conduct a practice review. A registered person or an accredited professional body must be served with a notice of intention to conduct a practice review at least ten days before commencement thereof. However, the Board may cause a practice review to be conducted urgently where the serving of a notice of intention to conduct the review would defeat the purpose thereof.

Additionally, the Board may recover the costs of a practice review from the registered person or accredited professional body concerned.

Rationale: The serving of a notice of intention to conduct a review is in line with accepted business principles but provision has to be made for urgent practice reviews. Recovery of regulatory costs is also an accepted principle in regulatory law.

11.4. **Clause 69- Powers of inspection and quality assurance committee, inspectors and special investigators**

(a) This clause sets out the search and seizure powers that members of the inspection and quality assurance committee, appointed inspectors and special investigators have in investigating contraventions of the law. In particular, these powers include-

- examine, extract information from and make copies of documents;
- request records, documents or other relevant information from, or interview employees, partners or directors;

- request a member of the Namibian Police Force or any other person for assistance
- summon past or present director, employee, partner or shareholder of the registered person or accredited professional body and whom the inspector believes is in possession of or has under his or her control, any document relating to the affairs of the registered person or accredited professional body.

(b) The clause further sets out the ordinary powers an inspector or member of the inspection and quality assurance committee has in carrying out practice reviews in terms of the Board's practice review programme.

Rationale: The ability to investigate allegations of contraventions of the law with inspectors and investigators endowed with the requisite powers, is a crucial regulatory function that the Authority must be able to discharge. The powers that the Authority has in this regard are already articulated in other laws and are reproduced in accordance with legislative convention.

11.5. **Clause 70- Duties of registered person or accredited professional body in respect of practice review**

A registered person or accredited professional body subject to a practice review must permit entry of the inspection and quality assurance committee or inspector, cooperate with them and provide all records, documents or information available to the registered person or accredited professional body as requested. Failure to comply may be regarded as unprofessional conduct by a registered person or non-compliance with the law by an accredited professional body.

Rationale: This is to ensure that there is a legal duty upon the registered person or accredited professional body to comply.

11.6. **Clause 71- Practice review or investigation report**

On completion of a practice review, the inspection and quality assurance committee, inspector or special investigator has to prepare a written report containing the findings of the practice review or investigation and any recommendations pertaining to the practice of the registered person or the business of the accredited professional body concerned. An inspector or special investigator must provide his or her practice review or investigation report to the inspection and quality assurance

committee. That committee must serve a copy of the report on the registered person or accredited professional body for written comment. The committee must consider any written submissions and make appropriate changes to the report where justified.

Rationale: The production of a report after a practice review or investigation is standard practice and so is giving an opportunity to a registered person or accredited professional body to comment on the report.

11.7. **Clause 72- Powers of inspection and quality assurance committee**

Having considered a practice review or investigation report, the inspection and quality assurance committee may-

- consider the practice review or investigation completed;
- monitor, or ensure an inspector monitors, any action the registered person or accredited professional body has agreed to take;
- order that person or professional body to report back to that committee, in writing, within the time period specified in the order, on any action he or she or the body has agreed to take;
- order that person or professional body to take any action which the committee considers necessary; or
- refer any matter arising from the practice review or investigation that, in the opinion of the committee, should be dealt with as a complaint or violation of this Act to the Board.

Rationale: The inspection and quality assurance committee serves as the mandatary of the Board to consider as a first port of call all issues emanating from a practice review or investigation report. This is to ensure efficiency

12. PART 12- DISCIPLINARY POWERS OF BOARD

12.1. **Clause 73- Definitions**

This clause contains definitions for the purposes of Part 12, which include **complainant**, **complaint**, **conduct** (including an act or omission), **former registered person** (referring to a person whose registration ceased under the law), **investigator** and **respondent**.

Rationale: For ease of reading

12.2. **Clause 74- Code of conduct and disciplinary rules by Authority**

- (a) This clause provides that the Board with the assistance of –
- the ethics committee must prescribe a code of professional conduct which is compliant with any applicable international code of professional conduct setting out rules and guidelines for professional ethics and specifying the conduct that constitutes unprofessional conduct.
 - the investigation committee and the disciplinary committee formulate and prescribe disciplinary rules pertaining to the investigation of unprofessional conduct, the procedures for the lodging of a complaint, charge or allegation, the form of a summons for the purpose of the attendance of a witness and the production of any book, record, document or thing by a witness, the leading of evidence and the recording of the proceedings at an inquiry or hearing.
- (b) Both the code of conduct and disciplinary rules must be approved by the Minister.

Rationale: In order to investigate unprofessional conduct and to discipline registered persons, the Board must act according to an internationally comparable code of conduct, and disciplinary rules.

12.3. **Clause 75- Continuing jurisdiction**

In terms of this clause, a former registered person continues to be subject to the jurisdiction of the Authority or any of its committees for unprofessional conduct that occurred while the person was still a registered person. However, a complaint may not be made or instituted after a period of more than six years after a person ceased to be a registered person.

Rationale: This is to ensure that a registered person does not cease registration under the law simply to avoid investigation and discipline by the Authority. There is however a time limitation of 6 years

12.4. **Clause 76- Unprofessional conduct**

This provision sets out the conduct which constitutes unprofessional conduct. In particular, a registered person commits unprofessional conduct if the person-

- fails to comply with the Bill or its Regulations, the code of professional conduct or disciplinary rules and the code of ethics in a manner that renders the person unsuitable to be registered;
- fails or refuses to comply or complies insufficiently, with a lawful instruction of the Authority;
- commits a criminal offence;
- refuses or fails to cooperate fully in respect of a practice review or the investigation or hearing of a complaint;
- is professionally incompetent
- engages in the conduct harmful to the best interests of a client or the public or to the integrity of the accounting or auditing professions.

This provision is not exhaustive in defining the type and nature of unprofessional conduct that the Authority may investigate and discipline

Rationale: The nature and type of conduct, though not exhaustive, outlines what constitutes unprofessional conduct.

12.5. **Clause 77- Referral of record or report of unprofessional conduct to Board**

If it appears to a court during proceedings before it that there is proof of unprofessional conduct on the part of a registered person or former registered person, the court must direct that a copy of the record of the proceedings, or any part thereof as relates to that conduct, be sent to the Authority. The same applies to any regulator.

Rationale: This provision enables the Authority to react to complaints against registered persons that may become apparent from court proceedings or from a report by a regulator.

12.6. **Clause 78- Complaint of unprofessional conduct or against accredited professional body**

- (a) All complaints regarding a trainee auditor, registered auditor or former registered auditor must be made in writing to the Authority. Complaints against a trainee accounting technician, registered accounting technician, trainee professional accountant, registered professional accountant or former registered accounting technician or professional

accountant must be made to the accredited professional body with which he or she was associated.

- (b) A complaint against an accredited professional body must be made in writing to the Authority.
- (c) The Authority may even if no complaint has been made investigate conduct referred to above if it has reasonable cause to do so.

Rationale: Complaints relating to auditors or trainee auditors must be made to the Authority and those relating to accountants and accounting technicians to their accredited professional body in accordance with the three-tier regulatory framework proposed by the Bill.

12.7. **Clause 79- Service of copy of complaint**

- (a) Where the Authority investigates the complaint, it has to serve on the respondent a copy of the complaint and written notice of the respondent's right to submit a response to it.
- (b) Any response received from a respondent must be provided to the complainant and thereafter refer the complaint to the investigation committee.

Rationale: The respondent is afforded at an early stage with the right to consider and respond to any complaint.

12.8. **Clause 80- Consideration by investigation committee**

The investigation committee must consider the complaint and any response and may dismiss the complaint or investigate the complaint or refer it to an investigator.

Rationale: The assessment of the complaint by a committee dedicated to investigations may expedite the proceedings at an early stage.

12.9. **Clause 81- Investigation by investigation committee or investigator**

This clause sets out the manner in which a complaint must be investigated by the investigations committee or an investigator.

Rationale: This provision is intended to ensure fairness and transparency in the investigation of a complaint.

12.10. **Clause 82- Investigation report**

In terms of this provision, the investigation committee or the investigator, as the case may be, should provide an investigation report to which both the complainant and the respondent may submit a written response.

Rationale: This provision is intended to ensure fairness and transparency to both the complainant and the respondent.

12.11. **Clause 83- Response to investigation report**

The investigation committee, having received the submission of the complainant or the respondent to the investigation report may dismiss the complaint if it was frivolous or there is insufficient evidence or refer the complaint to the disciplinary committee for a hearing. All affected parties must be informed of the decision of the investigation committee.

Rationale: This allows consideration of the all the facts and evidence provided in respect of a complaint by the investigation committee and ensures fairness in the process.

12.12. **Clause 84- Charge against respondent**

If the investigation committee recommends that sufficient grounds exist for a charge to be brought against a respondent the disciplinary committee must charge the respondent.

Rationale: The disciplinary committee chaired by a senior legal practitioner or a judge are enjoined to take charge of the disciplinary process.

12.13. **Clause 85- Hearing by disciplinary committee**

This clause stipulates the procedures for a hearing of the complaint against a respondent by the disciplinary committee within the required period and according to the Authority's disciplinary rules.

Rationale: The hearing of the complaint is in accordance with the rules of natural justice to ensure a fair assessment of the complaint by the disciplinary committee.

12.14. **Clause 86- Determination and order**

Within 30 days after a hearing concludes the disciplinary committee has to indicate in writing whether or not the respondent is guilty of unprofessional conduct. If the finding is that the respondent is guilty, the committee must-

- take into account any aggravating or mitigating circumstances;
- impose any of the orders referred to in clause 87; and
- serve the respondent with the finding and the order made and inform the Board thereof.

Rationale: These are standard procedures for finalising the disciplinary hearing.

12.15. **Clause 87- Penalties in respect of respondent found guilty**

The disciplinary hearing may impose any of the following penalties:

- that the respondent to undergo additional education or training;
- that the respondent participates in counselling or a rehabilitative treatment program;
- a reprimand of the respondent
- imposing terms and conditions on the registration or accreditation of the respondent;
- an order suspending the registration or accreditation of the respondent for a specified period of time or until the occurrence of a specified future event, subject to any conditions as the disciplinary committee may determine;

- an order cancelling the registration or accreditation of the respondent;
- an order that the respondent pay all or part of the costs of the disciplinary committee;
- an order imposing a fine on the respondent in the prescribed amount
- any other sanction that the disciplinary committee considers appropriate

Where an accredited professional body finds a respondent guilty of unprofessional conduct, it may impose any of the penalties set out above.

If a respondent fails to comply with an order of the investigation committee or the disciplinary committee under Part 12, the Board may, without further hearing, make an order suspending the respondent's registration subject to any terms and conditions that the Board considers appropriate.

Rationale: The penalties are what ordinarily follows upon a finding that a respondent is guilty or is failing to comply with an order made by the investigation committee or the disciplinary committee

12.16. **Clause 88- Inquiry in respect of registered person not to prejudice civil or criminal liability**

The institution of disciplinary proceedings against a respondent does not prevent any person, body or institution to institute civil proceedings, or the Prosecutor-General to institute criminal proceedings, or an employer to take disciplinary action, against that person based on the same facts that served before the disciplinary committee. Similarly, the Authority may institute disciplinary proceedings against a registered or former registered person despite there be pending criminal or civil charges against that person based on the same facts.

Rationale: This is to ensure that there is no defence of double jeopardy available to a respondent since the subject-matter and intent of the different hearings envisaged differ.

13. PART 13- OFFENCES

13.1. **Clause 89- Offences relating to registration and certificates**

This clause deals with offences such as fraudulently obtaining certificates to practise, forgery or counterfeiting such certificate, or making any false or fraudulent declaration, certificate, application or representation to procure such certificate.

13.2. Clause 90- Reportable irregularities and false statements in connection with audits

A registered auditor who fails to report an irregularity in accordance with **section 64**, or who, in connection with the audit of any financial statement, knowingly or recklessly expresses an opinion or makes a report or other statement which is false in a material respect, commits an offence.

13.3. Clause 91- Offences relating to disciplinary hearings

A person who has been duly summoned to appear before the disciplinary committee for a hearing and who refuses or fails to attend the hearing, refuses to take the oath, leaves the hearing without the consent of the presiding officer or refuses to give evidence or who obstructs or interrupts any part of the proceedings at any hearing, commits an offence.

13.4. Clause 92-False evidence

A person who gives false evidence on oath or affirmation at a hearing commits perjury.

13.5. Clause 93- Jurisdiction of magistrate's court

A magistrate's court has jurisdiction to impose any penalty provided for by the Bill.

14. PART 14- GENERAL PROVISIONS

14.1. Clause 94- Limitation of liability

In terms of this clause person is only personally liable for loss or damage due to the performance of his or her duties if the loss or damage is due to his or her willful misconduct, gross negligence, dishonesty or fraud.

Rationale: This is to protect those officials from unnecessary law suits due to acts or omissions arising out of the performance of their duties in good faith.

14.2. Clause 95- Requirement of professional indemnity insurance

A registered person has to obtain professional indemnity insurance in the amount prescribed by the Board.

Rationale: This is to limit the exposure to members of the public or entities to loss or damage resulting from the conduct of registered persons.

14.3. **Clause 96- Rules relating to practice under firm name**

This clause spells out the what must appear on a letterhead of a firm where an auditor, a professional accountant or accounting technician practises under a firm name or title.

Rationale: This is to avoid confusion between firm names and the names of individual practitioners.

14.4. **Clause 97- Confidentiality**

This clause stipulates that any person with knowledge of the affairs of the Authority may not disclose any information acquired in the performance of his or her functions in terms of the Bill unless the person has to disclose the information as part of the performance of his or her duties, or the person is required to do so by a court or during a hearing or investigation or where the information is required by any regulator for purposes of an investigation or any disciplinary action or criminal prosecution.

Rationale: This is to protect the confidentiality of information pertaining to the affairs of the Commission

14.5. **Clause 98 - Exemption by Board**

- (a) The Board may on application or on its own initiative exempt a person who renders accounting services in Namibia from the provisions of this Bill subject to the conditions stipulated in clause 98, particularly, that
- the person must be a member in good standing of a body in Namibia which governs the practice of a profession; and

- that body has to maintain and enforce rules to ensure that its members are fit and proper persons and meet acceptable requirements relating to education, practical training and experience.

(b) A **profession** is defined to mean an occupation, practice, or vocation requiring mastery of a complex set of knowledge and skills through formal education and practical experience, governed by a body responsible for the its supervision or regulation.

Rationale: This provision seeks to prevent all persons who incidentally renders accounting services as part of their profession, (for example a lawyer)s from having to be registered as an accountant or accounting technician under the Bill .

14.6. **Clause 99- Regulations**

This clause deals with the matters in which respect the Minister, on the recommendation of the Board may make regulations.

Rationale: Standard legislative provision.

14.7. **Clause 100- Repeal of laws, consequential amendments and transitional provisions**

This clause deals with the repeal of the Public Accountants' and Auditors' Act, 1951.

14.8. **Clause 101- Transitional provisions**

This clause deals with the transitional provisions so as not to jeopardise existing rights and procedures pending under the Public Accountants' and Auditors' Act, 1951.

14.9. **Short title and commencement**

The Bill once enacted is to be called the Accountants and Auditors Act, 2019