



INSTITUTE OF  
CHARTERED  
ACCOUNTANTS  
OF NAMIBIA

# **INSTITUTE OF CHARTERED ACCOUNTANTS OF NAMIBIA**

## **BY-LAWS**

Issued 18 May 2021

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## PART A – GENERAL PROVISIONS

### 1. DEFINITIONS

In these By-Laws, unless inconsistent with the context:

- (a) "**Absentee member**" means a member who is ordinarily resident outside Namibia for a full calendar year;
- (b) "**Council**" means the Council of the Institute;
- (c) "**Exclusion**" means permanent removal from membership of the Institute;
- (d) "**Honorary Life member**" means a member who has been elected as such by the Council in terms of By-Law 26;
- (e) "**Institute**" means The Institute of Chartered Accountants of Namibia.
- (f) "**Long service member**" means a member who has been elected as such by the Council in terms of By-Law 26;
- (g) "**Meetings**" means meetings of members of the Institute;
- (h) "**Member**" shall, unless the contrary intention appears, mean Chartered Accountant members of the Institute who has satisfied the requirements for qualification of membership pursuant to these By-Laws, and who has been admitted to membership of the Institute;
- (i) "**Month**" means a calendar month;
- (j) "**Namibia**" means the Republic of Namibia;
- (k) "**PAAB**" means the Public Accountants' and Auditors' Board established in terms of Section 2 of the Public Accountants' and Auditors' Act;
- (l) "**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 any one person or of the state;
- (m) "**Registered Accountant and Auditor**" means any person whose name is enrolled on the register of accountants and auditors established and maintained by the PAAB;
- (n) "**Registered address**" in respect of any member means the address of such member as last recorded in terms of By-Law 19;
- (o) "**Secretariat**" means the officers and employees appointed by the Council;
- (p) "**Secretariat EXCO**" means the Head of Secretariat, the Technical Standards Executive, and the Professional Development Executive.
- (q) "**Suspension**" means a person is temporarily removed from membership of the Institute during which time the person is not a member of the institute and may not use the designation CA(NAM);
- (r) "**Trainee accountant**" means a person or learner who is in the permanent employ of a training office, who has satisfied the requirements for registration as a trainee accountant pursuant to these By-Laws and who is a registered trainee accountant of the Institute;

- (s) "Year" means a year commencing on 1 January.

Unless inconsistent with the context, words and expressions in the masculine gender include the feminine and words signifying the singular number include the plural.

## 2. DOCUMENTS ISSUED UNDER THE AUTHORITY OF THE INSTITUTE

In every document issued under the authority of the Institute, unless inconsistent with the context, words and expressions in the masculine gender include the feminine and words signifying the singular number include the plural and vice versa.

## 3. COUNCIL

- (a) The affairs of the Institute shall be managed by a Council consisting of members appointed in terms of clause 6 of the Constitution.
- (b) A member of the Council shall at all times act in the interests of the Institute as a whole.
- (c) A member shall not be eligible for appointment to the Council if:
- i. he or she is declared insane or incapable of managing his or her affairs;
  - ii. he or she is an un-rehabilitated insolvent, or if he or she surrenders his or her estate for the benefit of his or her creditors or makes an offer of compromise to his or her creditors;
  - iii. he or she is convicted in Namibia or elsewhere of any criminal offence which, in the opinion of the Council, is of a disgraceful or improper nature, and a period of 10 years since such conviction has not elapsed;
  - iv. he or she is found by the PAAB or by a disciplinary committee of the Institute to have conducted himself or herself in an unprofessional manner, and sentenced to a fine exceeding an amount to be determined by the Council from time to time and published for the information of the members, or is suspended from membership of the Institute, and a period of 10 years since such finding by the PAAB or Disciplinary Committee of the Institute, as the case may be, has not elapsed;
  - v. he or she ceases to be resident in Namibia.
- (d) Notwithstanding the provisions of By-Law 3(c) hereof, the appointment of a member of the Council shall terminate *ipso facto* and he shall vacate his office on the happening of any of the following events:
- i. he ceases to be a member of the Institute;
  - ii. he resigns his office by notice in writing to the Council;
  - iii. he is absent for more than three consecutive meetings of the Council without its leave;
  - iv. he is declared insane or incapable of managing his affairs;
  - v. he is sequestered, provisionally or finally, or surrenders his estate for the benefit of his creditors or makes an offer of compromise to his creditors;
  - vi. he is convicted in Namibia or elsewhere of any criminal offence of which, in the opinion of the Council, is of a disgraceful or dishonourable nature;
  - vii. he is found by the PAAB or by a Disciplinary Committee of the Institute to have conducted himself in an unprofessional manner;
  - viii. he ceases to be a resident in Namibia.

#### **4. MEETINGS OF COUNCIL**

- (a) The term of office of the Council shall be from the end of the Council meeting held from Annual General Meeting in one year until the end of the Annual General Meeting held in the following year.
- (b) The Council shall meet at least three times in each calendar year at such times and places as it may determine.
- (c) The quorum for meetings of the Council shall be that number of elected members comprising a majority of the elected Council as then constituted.
- (d) Questions arising at a meeting of the Council shall be decided by a majority of votes of elected members personally present and the president shall have a casting vote in addition to his/her deliberative vote.
- (e) A resolution in writing signed by all the members of the Council shall be as valid and effective as if it had been passed at a meeting of the Council duly convened and constituted: provided that, for purposes of approving technical statements, a written resolution assented to by a majority of members of the Council shall be as valid and effective as if it had been passed at a meeting of the Council duly convened and constituted.
- (f) The Council shall cause proper minutes to be kept in separate bound Minute books of:
  - i. all meetings of the Council; and
  - ii. all general meetings of the members of the Institute; and
  - iii. all meetings of Council committees.

#### **5. EXECUTIVE COMMITTEE**

- (a) The Executive Committee shall consist of the President, the Vice President and the Secretariat EXCO.
- (b) The Council shall determine the powers and procedures of the Executive Committee. The Executive Committee shall have only such powers as may from time to time be delegated to it by the Council on such terms and conditions as the Council may prescribe. The Council may at any time revoke any powers so delegated.

#### **6. CHAIRMAN OF MEETINGS**

The President of the Institute, or in his or her absence, the Vice President, shall preside as chairman at all meetings of the Institute and Council. In the absence of the President and the Vice President the members present at the meeting shall elect from their own number a chairman for that meeting.

#### **7. POWERS AND DUTIES OF THE SECRETARIAT EXCO**

The powers and duties of the Secretariat EXCO arising out of the Constitution or By-Laws may be delegated to an appropriate person in the secretariat.

#### **8. HEAD OFFICE**

The head office of the Institute shall be situated at such place as the Council may from time to time determine.

## 9. SECRETARIAT

The Council may appoint such officers and employees of the Institute on such terms and conditions as it shall deem fit and may remove them or any of them and appoint another or others in their place. This authority may be delegated to the Secretariat EXCO.

## 10. PROFESSIONAL CONDUCT ADVISORY AND DISCIPLINARY COMMITTEES

The Council shall appoint a Professional Conduct Advisory Committee ("PCAC") and a Disciplinary Committee ("DC") which shall have the powers to carry out the duties and exercise the functions granted to those committees under these By-Laws.

- (a) There shall be appointed by the Council at its first meeting after taking office in each year the following Committees which shall carry out the duties and exercise the functions and powers granted to them under these By-Laws:
  - i. A Professional Conduct Advisory Committee which shall consist of four members of the Institute, of whom three members shall form a quorum. The Committee shall have the right at any time to co-opt additional members of the Institute to the Professional Conduct Advisory Committee whenever it deems such additional appointments necessary.
  - ii. A Disciplinary Committee which shall consist of not less than 4 and not more than twelve members of the Institute of whom the majority shall form a quorum to act and function as provided in these By-Laws in regard to each complaint referred to it by the Professional Conduct Advisory Committee. The Disciplinary Committee shall have the right at any time to co-opt additional members to the Disciplinary Committee whenever it deems such additional appointments necessary.
- (b) When a matter has been referred to the PAAB in terms of By-Law 11(a)iii.1) it shall for the purposes of this By-Law not be deemed to be an incomplete case and thereafter it shall be dealt with as a new case.
- (c) Any vacancies occurring at any time in either of the foregoing Committees may be filled by the Council.
- (d) A person who, while he or she is a Member or a former Member, a Trainee Accountant or former Trainee Accountant, became liable to disciplinary action under these by-laws, shall continue to be subject to these by-laws after they have ceased to be a Member, or Trainee Accountant, as the case may be as if they had not so ceased; and references in these by-laws to a Member, or Trainee Accountant shall be construed accordingly so far as may be necessary to give effect to this paragraph.

## 11. COMPLAINTS PROCEDURES

- (a) All complaints shall immediately be brought to the attention of the Secretariat EXCO who shall deal therewith as follows:
  - i. **STEP 1:** On receipt of a complaint the Secretariat EXCO **shall**, without undue delay, enter the complaint in the Investigation Tracker and when the complaint emanates from a media report, deal with same in terms of paragraphs 11(h).;
  - ii. **STEP 2:** Forthwith ascertain whether the complaint is against a Trainee Accountant or a Member registered with the PAAB;
  - iii. **STEP 3:** The Secretariat EXCO **shall acknowledge receipt** of the complaint (other than one emanating from a media report) in writing and shall inform the complainant whether the

complaint is against a Trainee Accountant or a Member registered with the PAAB and if so whether the complaint will be dealt with by the Institute or referred to the PAAB, as applicable:

- 1) If the accused is a Trainee Accountant or is a Member registered with the PAAB, the Secretariat EXCO **shall** refer the complaint to the PAAB; or
  - 2) If in the case of a Trainee Accountant or a Member registered with the PAAB, the PAAB fails and/or decides not to prosecute a complaint referred to it and indicates to the Institute its intention not to proceed with disciplinary action against the accused, then the Secretariat EXCO **shall** deal with the complaint according to the procedure as if the accused is not registered with the PAAB;
- iv. **STEP 4:** If the accused is a Member of the Institute and is not a Trainee Accountant or a Member registered with the PAAB, the Secretariat EXCO **shall** deal with the complaint as follows:
- 1) If the Secretariat EXCO, having considered the complaint and the advice of legal counsel as necessary, is of the view that the complaint **does not amount to a prima facie** case against the accused or where a complainant has neglected or refused to comply with the requirements of these By-Laws, it may dismiss the complaint. The complainant shall forthwith be informed of this view and the Secretariat EXCO **shall** record this in the Investigation Tracker.
  - 2) Where the Secretariat EXCO with the advice of legal counsel as necessary, is of the view that the complaint **amounts to a prima facie** case against the accused, the Secretariat EXCO shall notify the accused:
    - 2.1 of the nature of the complaint in sufficient detail, to enable the accused to adequately respond thereto;
    - 2.2 of the determination that the complaint constitutes a *prima facie* case against the accused;
    - 2.3 to respond to the Secretariat EXCO regarding the merits of the complaint within 21 (twenty-one) days.

The accused's response shall indicate whether he or she admits the facts set out in the complaint or any portion thereof and whether the accused admits that he or she is guilty of a Punishable Offense in the respects alleged or any part thereof;
    - 2.4 that any response from the accused will be taken into account to determine the accused's misconduct and may be used in evidence against him/her;
    - 2.5 of the consequences of acknowledgement of misconduct;
    - 2.6 that if he/she fails to respond to the complaint within the stipulated time, the accused will be regarded as having pleaded guilty whereupon the Secretariat EXCO shall refer the matter to the DC and notify the accused of the referral to the DC. The Secretariat EXCO may, without inviting further representations, refer the matter to the DC in the absence of the accused's representations; and upon the expiry of the period granted for a response, the Secretariat EXCO shall refer the complaint to the **DC** to be dealt with in terms of section 13.
- v. Save where the Secretariat EXCO otherwise decides, a complaint shall be in the form of an affidavit, detailing in precise terms the specific acts or failure complained of and shall be lodged with the Secretariat EXCO.



- vi. The Secretariat EXCO may require a complainant to provide on affidavit further particulars on any aspect of the complaint.
  - vii. The Secretariat EXCO shall not be obliged to disclose the source of a complaint.
- (b) Notwithstanding the above, the Secretariat EXCO may, at any time, reopen a matter which has been previously closed following assessment where he or she has reason to believe that:
- i. the decision not to proceed with the matter may have been materially flawed (for any reason); or
  - ii. there is new information which may lead, wholly or partly, to a different decision; or
  - iii. the accused may have previously withheld information; or
  - iv. the accused may have previously misled the Secretariat EXCO,
- in which case the Secretariat EXCO shall deal with the matter as if it were a new complaint.
- (c) If the accused responds to the notification within the stipulated period and **denies liability for the offence**, the Secretariat EXCO must refer the matter to the PCAC and notify the accused that the matter is being referred to a PCAC.
- (d) In any such PCAC hearing:
- i. The accused is not permitted a representative but may appear in person or at his/her choice make written submissions for consideration by the PCAC; If the accused does not attend and makes no written submission, the PCAC may consider the complaint in the accused's absence;
  - ii. Once the PCAC has considered the matter and made its findings, the Secretariat EXCO Shall:
    - 1) forthwith notify the accused of the finding; and
    - 2) forthwith enter this in the Investigation Tracker.
- (e) In the case where the accused is a member of Council, where the Secretariat EXCO with the advice of legal counsel as necessary, is of the view that the case is a *prima facie* case, the complaint shall be referred to the PCAC for further action.
- The PCAC shall then deal with the matter in terms of section 11 of these by-laws.
- (f) In the case where the accused is a member of secretariat EXCO, where the President with the advice of legal counsel as necessary, is of the view that the case is a *prima facie* case the complaint shall be referred to the PCAC for further action.
- The PCAC shall then deal with the matter in terms of section 11 of these by-laws.
- (g) The findings of the PCAC are final.

### Media Reports

- (h) In the event that it comes to the Institute's attention, via media reports, that a member is implicated in a matter which implies professional misconduct on the part of the member, the following actions shall be taken:
- i. Forthwith ascertain whether the complaint is against a Member or Trainee Accountant and whether the Member is registered with the PAAB;
  - ii. If the accused is a Trainee Accountant or is a Member registered with the PAAB, the Secretariat EXCO shall bring the Media report to the attention of the PAAB;

- iii. If the Member is not a Trainee Accountant or is not a Member registered with the PAAB, the Secretariat EXCO shall deal with the complaint as follows:
  - 1) If the Secretariat EXCO, having considered the report and the advice of legal counsel as necessary is of the view that the report **does not amount to a prima facie** case against the member, it may dismiss the matter.
 

If the view of the Secretariat EXCO with the advice of legal counsel as necessary, is that the report does amount to a *Prima Facie* case, it shall issue a formal notice to the member referring the member to the media coverage with a copy attached and request the member to respond thereto within 21 days from the date of the notice.
  - 2) Any statement obtained from the member shall be submitted to the PCAC.
- (i) If the accused fails to respond to the notification within the stipulated period, the accused will be regarded as having pleaded guilty whereupon the PCAC shall refer the matter to the DC. The Secretariat EXCO **shall** forthwith notify the accused of the referral to the DC.
- (j) In any such PCAC hearing:
  - i. The accused is not permitted a representative but may appear in person or at his/her choice make written submissions for consideration by the PCAC; If the accused does not attend and makes no written submission, the PCAC may consider the complaint in the accused's absence;
  - ii. Once the PCAC has considered the matter and made its findings, the Secretariat EXCO Shall:
    - 1) forthwith notify the accused of the finding; and
    - 2) forthwith enter this in the Investigation Tracker.
- (k) In the case where the accused is a member of Council, where the Secretariat EXCO with the advice of legal counsel as necessary is of the view that the case is a *prima facie* case, the complaint shall be referred to the PCAC for further action.
 

The PCAC shall then deal with the matter in terms of section 11 of these by-laws.
- (l) In the case where the accused is a member of secretariat EXCO, where the President with the advice of legal counsel as necessary is of the view that the case is a *prima facie* case, the complaint shall be referred to the PCAC for further action.
 

The PCAC shall then deal with the matter in terms of section 11 of these by-laws.
- (m) The findings of the PCAC are final.

## 12. POWERS AND DUTIES OF PROFESSIONAL CONDUCT ADVISORY COMMITTEE

- (a) The PCAC has jurisdiction with regard to the following Advisory matters:
  - i. To advise on any complaint which is brought to its attention by the Secretariat EXCO in respect of which, in the opinion of the Secretariat EXCO there is **no prima facie** evidence which indicates that a Member, former Member, Trainee Accountant or former Trainee Accountant may have committed an offence under these By-laws;
  - ii. To act in an advisory capacity to the Secretariat EXCO who may at any time in the consideration, or investigation of any complaint consult with the PCAC regarding the handling of the complaint;
- (b) Where a Member, former Member, Trainee Accountant, or former Trainee Accountant has been found **guilty in criminal proceedings** in a court of fraud, theft, robbery, extortion, forgery, or any

criminal offence involving dishonesty, the PCAC shall consider the matter in terms of paragraph 11(d);

### **Findings of the PAAB**

- (c) Where the conduct of an accused has been investigated or dealt with by the PAAB, whether as a result of a reference in terms of paragraph 11(a)iii.1) or otherwise, and the PAAB or any committee of the PAAB:
  - i. has found the accused **not guilty** of any alleged misconduct, the Institute shall be obliged to accept that finding for the purposes of these By-laws and to dispose of the matter without taking any further steps against the accused in relation to the Complaint, except as per 12(d)i.; or
  - ii. has found the accused **guilty** of one or more of the charges of misconduct and has sentenced him or her the matter shall be referred to the PCAC which shall be obliged to accept that finding and must consider the matter in terms of paragraph 11(d);
- (d) Notwithstanding anything to the contrary contained in these By-laws:
  - i. If the PAAB or any committee of the PAAB has investigated or dealt with the alleged misconduct of an accused and has found him or her not guilty thereof on the grounds that the PAAB or any committee did not have capacity or jurisdiction or was not competent to investigate that conduct, then the PCAC shall nevertheless have the right itself to investigate the allegations in terms of these By-laws and to take whatever steps it deems appropriate in accordance with these Bylaws, including a referral to the DC;
  - ii. a conviction or finding by the PAAB or any committee of the PAAB shall for purposes of these By-laws be accepted as conclusive evidence of a conviction or finding, and it shall not be necessary for any such purposes to adduce any evidence other than evidence of the conviction or finding in any proceedings in terms of the By-laws.

### **13. POWERS AND DUTIES OF DISCIPLINARY COMMITTEE**

- (a) DC Hearings shall be conducted at a venue determined by the Secretariat EXCO and shall be open to the public unless exceptional circumstances exist which in the opinion of the DC involved with the matter warrant such hearings being held in camera.

Subject to paragraphs 13(b) and 13(d) below, before the commencement of adjudication of the complaint, the DC may determine that a hearing, or any part thereof, be conducted:

- i. electronically;
  - ii. on the basis of affidavits and/or witness statements and/or documents only; or
  - iii. by way of an oral hearing.
- (b) If the accused fails to respond to the invitation to make representations within the period stipulated in paragraph 11(a)iv.2)2.3, the DC may consider the complaint in the absence of the accused's representations and may make such findings as to guilt and/or sanction as it considers appropriate having due regard to the evidence before it and provide reasons for its determination.
  - (c) When, upon consideration of the complaint and the accused's explanation in answer thereto, or elucidation of the matter, either written or oral, the DC is satisfied that:
    - i. The accused has given a reasonable explanation with regard to the conduct imputed to him or her; or

- ii. The conduct imputed to the accused does not constitute improper conduct; or
  - iii. There is no reasonable prospect of proving that the member or former member has been guilty of the conduct imputed to him or her, it may decide not to proceed further in the matter and shall advise the complainant and the accused accordingly.
- (d) If the DC decides to determine the matter on the basis of affidavits and/or witness statements and/or documents only, the following procedure shall apply:
- i. Upon receipt of the complaint the DC shall either provide a copy of the complaint to the accused and invite the accused to provide a response thereto on affidavit within 21 (twenty-one) days, or such further period as permitted by the DC, or
  - ii. if it considers it inappropriate to disclose to the accused the identity of the complainant who is a “whistleblower”, the DC shall inform the accused of the nature of the complaint with sufficient detail to enable the accused to respond thereto.
  - iii. The accused must also be advised that his/her response may be used in evidence against him/her;
- (e) The DC may request further particulars from the complainant or the accused at any time within a reasonable time as determined by the DC;
- (f) The DC must invite the Institute and the accused (who is entitled to legal representation) to make submissions based on the affidavits orally or in writing, as it may direct; and If in the course of proceedings in terms of this paragraph, the DC considers it in the interests of a fair process that oral evidence or further documentary may be produced, it may so order.
- (g) If the DC decides in its discretion to consider the complaint by holding an oral hearing, the following procedure shall apply:
- i. The accused and any other witnesses shall be given reasonable notice of the date, time, and venue of the disciplinary hearing.
  - ii. The accused shall be entitled to legal representation at the disciplinary hearing and to call witnesses but the accused shall not be a compellable witness.
  - iii. The DC shall have the power to order the production for inspection of any books, documents, and papers, inclusive of electronic records, in the possession of or under the control of the Institute, the accused, or from any other Member or Trainee Accountant, if it considers such books, documents, and papers necessary for a just determination of the issues.
  - iv. If any person other than the accused whose evidence may be material has not been called as a witness, the DC may call such person as a witness.
  - v. Any Member or Trainee Accountant from whom evidence is required (including the production of relevant documentation) shall be obliged to provide such evidence whether in person at an oral disciplinary hearing or on affidavit, as the case may be.
  - vi. Failure by a Member, or Trainee Accountant to co-operate with any hearing or investigation conducted by the DC or PCAC shall constitute a Punishable Offense. The DC shall retain discretion to admit, in addition to oral evidence, affidavits, or other documentary evidence.
  - vii. The Secretariat EXCO is permitted to communicate with the complainant, accused, and/or any other relevant person on behalf of the DC as set out in paragraphs 13(b) and 13(d) above.
- (h) Unless in its discretion and after hearing argument the DC decides to the contrary, the Institute shall commence with adducing evidence. The chairperson of the DC shall be permitted to engage

the services of a Legal Practitioner at any stage of a hearing of the DC to advise him or her on points of law and procedure in private. If the DC determines that the accused is guilty of a punishable offense, it shall make a finding to that effect and thereupon it shall have full power to order one or more of the following sanctions against the accused:

- i. a caution;
  - ii. a reprimand;
  - iii. a fine of up to a maximum amount to be determined by the Council from time to time;
  - iv. suspension from membership, or registration as a Trainee Accountant for a period not exceeding 5 (five) years;
  - v. exclusion from membership or registration as a Trainee Accountant;
  - vi. disqualification from applying for membership or registration as a Trainee Accountant permanently or for such period as the DC may determine, or subject to such conditions as the DC may determine;
  - vii. Delivery of documents which are the subject matter of a complaint unlawfully withheld by an accused from a complainant; or any person or entity represented by the complainant; and/or
  - viii. Re-payment of client money which is the subject matter of a complaint unlawfully withheld from a complainant.
- (i) Where the DC imposes a fine in terms of paragraph 13(h)iii. it may suspend the payment of the fine or any part thereof on such conditions as it may determine, and where the DC imposes punishment in terms of paragraphs 13(h)iv., 13(h)v. or 13(h)vi., it may suspend the coming into effect of the punishment on such conditions as it may determine. A fine or repayment of client money must be made within 30 (thirty) days of the date on which the accused is notified of the Fine or Re-payment order, or within such other period stipulated by the DC.
- (j) Once the DC has considered the matter and made its findings, the Secretariat EXCO must forthwith notify the accused of the finding and sanction and must enter this in the Investigation Tracker.
- (k) The DC shall have the power to order any accused upon whom any sanction is imposed under these By-laws to pay the costs, or such part of those costs as the DC may consider reasonable, the quantum of which shall be quantified and be certifiable as a debt to the Institute.
- (l) Any person who has been excluded from membership, or registration in terms of paragraph 13(h)v. shall not be entitled to apply for re-admission as a Member, or Trainee Accountant until the expiry of a period of 10 (ten) years reckoned from the date of such exclusion; provided, however, that the DC, on application and after at least 1 (one) year has passed, may reduce this period by up to 5 (five) years in any case at their discretion.
- (m) A member's disciplinary record may be expunged from his or her membership record, depending on the nature of the offence committed.
- (n) Any finding and sanction imposed by the DC, must be motivated by immediate oral reasons or written reasons within 30 (thirty) days, as the circumstances may require.
- (o) In determining the appropriate sanction, the DC shall have regard to the following factors:
- i. Whether the accused has previously been found guilty of a Punishable Offense, and if so, the nature thereof;
  - ii. The experience of the accused and the period of time the accused has been a Member or Trainee Accountant of the Institute; and

- iii. Any other factor which the DC considers to be relevant in the determination of the Fine, and  
record such reasons for the determination.
- (p) A fine is payable to the Institute within 30 (thirty) days of the date on which the accused is notified of the Fine or within such other period stipulated by the person or committee imposing the Fine.
- (q) The findings of the DC are final.

#### **14. RECORD AND PUBLICATION OF FINDINGS AND DECISIONS**

- (a) Notwithstanding anything contained in these By-laws, the Secretariat EXCO may, at any time, make such public statements as it thinks fit concerning any matter relating to or connected with the Institute's performance of its disciplinary obligations and may, at any time, make a public statement concerning any complaint or investigation or action instituted against a Member, former Member, Trainee Accountant or former Trainee Accountant ("public disciplinary statement").
- (b) The Secretariat EXCO may name or otherwise identify a Member, Trainee Accountant, or former Trainee Accountant in a public disciplinary statement in the following circumstances:
  - i. If the name of the Member former Member, Trainee Accountant or former Trainee Accountant and the general nature of the complaint, investigation, or action instituted against the Member is already a matter of public knowledge; or
  - ii. It reasonably appears to the Secretariat EXCO that:
    - 1) the failure to name or otherwise identify such Member, former Member, Trainee Accountant or former Trainee Accountant would defeat the purpose for which the public disciplinary statement is made;
    - 2) the public disciplinary statement is necessary or desirable in order to maintain public confidence in the Institute or its Members;
    - 3) in the event that the Member, former Member, Trainee Accountant or former Trainee Accountant has been notified of the finding (whether final or in draft form), the naming or other identification of the Member is in the public interest;
    - 4) in exceptional circumstances and in the event that the Member has not been issued with a notice of the finding (whether final or in draft form), the naming or other identification of the Member is both urgent and in the public interest; or
    - 5) in the opinion of the Secretariat EXCO it is otherwise in the public interest to publicly identify the Member, former Member, Trainee Accountant or former Trainee Accountant; or
    - 6) The matter is referred to a hearing which is open to the public.
  - iii. Prior to the issuing of a public disciplinary statement in which a Member, former Member, Trainee Accountant, or former Trainee Accountant is named or otherwise identified, the Secretariat EXCO shall provide 48 (forty-eight) hour notice of his or her intention to issue the statement to the accused.
  - iv. Subject to the provisions of paragraph 13.a), the Secretariat EXCO, shall cause to be published on the Institute's web-site, the details of future DC hearings.
  - v. Such details of future DC hearings shall contain the following information:
    - 1) the name of the member and the membership number;

- 2) the case number;
  - 3) a summary of the charges made against the member (the complaint/s);
  - 4) the date of the disciplinary hearing;
  - 5) the time of the disciplinary hearing; and
  - 6) the place where the disciplinary hearing will take place.
- (c) All findings and decisions of the PCAC and the DC shall take effect when made and shall be reported to the Council; by the Secretariat EXCO.
- (d) Where the PCAC or the DC has imposed a penalty on a member, the relevant committee shall direct that the name of the member, (and if the committee so directs, also the name of his or her firm), the by-laws which the member was found guilty of breaching and the penalty imposed as well as any information that is considered appropriate by the relevant committee, be published on the website of the Institute and in such further manner as the relevant committee may consider appropriate, including but not limited to, member communications.
- (e) Where the PCAC or the DC has found an accused not guilty of the complaint, no publication of that fact may take place unless the accused has requested publication (which request shall be made within ten (10) days of the notification to the accused of the relevant committee's finding).
- (f) In the event of a request by the accused of publication, the relevant committee shall retain the discretion to direct what information regarding the not guilty finding will be published and the manner in which the information will be published.

#### **Good standing certificates**

- (g) Should a member who is under investigation at the time of the issuance of a good standing certificate and is otherwise in good standing request a good standing certificate, the certificate will be modified with the following additional paragraph:
- “The member is currently under investigation by [the Institute, the Public Accountants and Auditors Board, the South African Institute of Chartered Accountants or the Institute of Chartered Accountants of Zimbabwe] for potentially committing an offense in terms of the relevant Institute's/associations by-laws. Any queries in respect of the investigation against the member as indicated may be addressed to the Institute directly.”*
- (h) Should the recipient of the good standing certificate request further information from the Institute, only the following information may be divulged:
- i. The by-laws which the member is being accused of breaching, and
  - ii. That the matter is still under investigation and for that reason no further information can be submitted at that point in time.

#### **15. CPD NON-COMPLIANCE AND NON-PAYMENT OF FEES**

- (a) Should a member fail to comply with the CPD policy, or fail to make full payment of membership fees by the end of 30 June following the deadline for CPD compliance or payment of fees respectively, the member will automatically be suspended from membership.
- (b) Should a member fail to comply with the CPD policy, or fail to make full payment of membership fees by the end of 30 September following the deadline for CPD compliance or payment of fees respectively, the member will automatically be excluded from membership as stipulated in section 13(h)v. of these by-laws.

- (c) Secretariat EXCO shall notify the non-compliant members of the above by 23 June and 23 September respectively,
- (d) Secretariat EXCO shall notify non-compliant members of the suspension or exclusion, as applicable, within 1 business day of their suspension or exclusion.
- (e) A member who has been excluded from membership in terms of par 15(b) above and reapplies for membership in terms of section 13(l) shall be subject to the Fit and Proper Assessment policy as approved by Council from time to time.

## **16. OTHER COMMITTEES**

- (a) The Council may appoint other Committees to assist it in the performance of its functions and duties and may appoint such of its members and such persons who are not members of the Council or the Institute as it may deem fit, to be members of any such Committee.
- (b) One of the members of the Committee may be designated by the Council as chairman of the Committee. Should the Council not so designate a member as chairman or should the member so designated not be present or be unable to act at any particular meeting, the Committee shall elect a chairman.
- (c) The Council shall approve the terms of reference for any such committee including determining the quorum for meetings of a Committee, and if not so determined, the quorum shall be fixed by the Committee.
- (d) Any Committee so formed shall comply with the instructions given by the Council and shall keep minutes of its meetings if so directed.
- (e) The Council may assign to a Committee so established such of its powers as it may deem fit and it shall not amend or repeal any decision arrived at or anything done by such committee under the power so assigned. Provided that if Council has assigned to a Committee certain powers it shall not amend or appeal any decision arrived at or anything done by such a committee under the power so assigned.
- (f) Any Committee to whom the foregoing powers have been assigned shall continue to act and retain the powers so assigned until its appointment is revoked by Council.

## **17. RULES OR CODE OF PROFESSIONAL CONDUCT**

The Council shall have the power to prescribe, from time to time, Rules or a Code of Professional Conduct, applicable to members and trainee accountants.

## **18. REGISTER OF MEMBERS AND TRAINEE ACCOUNTANTS**

- (a) The Council shall maintain registers in which shall be recorded the name of each person admitted to membership or who is registered as a trainee accountant. In the event of any person ceasing to be a member or trainee accountant for any reason whatsoever, his or her name shall be deleted from the register.
- (b) The Institute may issue in any year a list of the members or trainee accountants of the Institute and of their addresses, or any particulars, in respect of the members and trainee accountants of the Institute.



## **19. CERTIFICATES OF MEMBERSHIP**

All certificates of membership of the Institute shall be made in the form from time to time prescribed by the Council and shall be and remain the property of the Institute. Every member shall be entitled to receive from the Institute a certificate of membership but, in the event of suspension or removal or cessation of membership for any other reason such certificate shall be delivered to the Council.

## **20. DEATH OF MEMBER OR TRAINEE ACCOUNTANT**

Upon the Council being satisfied of the death of any member or trainee accountants, his or her name shall be removed from the register.

## **21. REGISTERED ADDRESS AND NOTICES**

Every member and trainee accountant shall give the Secretariat written notice providing an address as his or her registered address and shall notify it of any change thereof. Any notice required by this By-Law to be given to a member or trainee accountant may be given by sending it through the post addressed to such member or trainee accountant at his or her registered address and such notice shall be deemed to have been served at the time when it was posted.

## **22. E-MAIL ADDRESS AND NOTICES**

In addition to the registered address required as per By-Law 18, every member or trainee accountant may give the Secretariat written or electronic notice providing an e-mail address and shall notify it of any change thereof. Any notice required by these By-Laws to be given to a member or trainee accountant may be given by sending it to such e-mail address and such notice shall be deemed to have been served at the time when it was sent.

## **23. ANNUAL FINANCIAL STATEMENTS AND AUDIT**

The Council shall cause:

- (a) records to be properly kept of all transactions undertaken in the name of the Institute;
- (b) an annual report and financial statements to be prepared and circulated to members. Such statements shall be audited by a member or firm appointed at the Annual General Meeting. The remuneration of the auditor shall be determined between the Council and the auditor and shall be disclosed in the annual financial statements.

The Institute's financial year will end on 31 December each year.

## **24. AMENDMENT OF BY-LAWS**

The Council may, from time to time, amend these By-Laws as provided in the Constitution.

## **25. INTERPRETATION OF BY-LAWS**

The headings and sub-headings shall not affect the interpretation of these By-laws.

## **PART B – APPLICABLE ONLY TO CHARTERED ACCOUNTANTS**

### **26. APPLICATION FOR MEMBERSHIP**

Application for membership of the Institute shall be made to the Council in a form prescribed by the Council. Each applicant shall:

- (a) pay the entrance fee, if any, and the subscription for the current year as determined from time to time;
- (b) certify in the prescribed form that the information given by him therein is true and correct in every detail;
- (c) undertake in the event of his admission to observe the provisions of the Constitution from time to time in force; and
- (d) satisfy the Council in such manner as it may require at the date of his application that he or she is qualified for admission under By-Law 27, that he or she is a fit and proper person to be admitted to membership and is not less than 21 years of age.

### **27. QUALIFICATION FOR ADMISSION TO MEMBERSHIP**

Subject to the provisions of By-Law 26, qualification for admission to the Institute shall be proof to the satisfaction of the Council of one of the following:

- (a) that the applicant has passed the examinations, and has the practical experience, prescribed by the Council; or
- (b) that the applicant is a member in good standing of a body of accountants recognised by the Council for this purpose and has passed the examinations prescribed by the Council for this purpose, if so required by the Council.

### **28. LIFE AND LONG SERVICE MEMBERSHIP**

- (a) The Council may, in special circumstances, recognise the meritorious service of a member towards the Institute or the accounting profession as a whole by electing such member as an Honorary Life Member.
- (b) The Council may elect a member as a Long Service Member when such member has either –
  - i. Been a Chartered Accountant (Nam) for an unbroken period of forty (40) years; or
  - ii. reached the age of sixty-five (65) years and has been a Chartered Accountant (Nam) for an unbroken period of twenty-five (25) years; or
  - iii. attained the age of sixty-five years and has in the opinion of the Council retired
- (c) Honorary Life and Long Service Members of the Institute shall remain as such at the pleasure of the Council and shall not be liable for any subscriptions to the Institute.

### **29. CANCELLATION OF MEMBERSHIP**

- (a) The Council shall cancel the membership of any member who subsequent to his admission to membership –
  - i. is removed from an office of trust on account of misconduct; or
  - ii. is convicted of theft, fraud, forgery, or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine or to a fine

exceeding an amount to be determined by the Council from time to time and published by the Council for the information of members; or

- (b) The Disciplinary Committee may in its discretion order the cancellation of the membership of any member whose estate is provisionally or finally sequestered or who enters into an arrangement with his creditors subsequent to his admission to membership, provided however that before doing so the Disciplinary Committee shall afford such member an opportunity of furnishing an explanation in writing. Any such explanation shall be furnished by the member within twenty-one days after being called upon by the Disciplinary Committee to do so.
- (c) When the membership of a person is cancelled in terms of this By-Law, it shall remove his name from the Register immediately, and such person shall not be entitled to apply for his re admission as a member until the expiry of a period of ten years reckoned from the date of such cancellation, provided however that the Council, on the recommendation of the Disciplinary Committee, may reduce this period in any particular case where it considers that it would be just and equitable to do so.
- (d) The Council shall report any such cancellation to members for their exclusive and confidential information and such report shall in all cases include the name of the person whose membership has been cancelled, and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate: Provided that in the case of the cancellation of membership in terms of By-Law 29(b) it shall comply with any recommendation of the Disciplinary Committee.
- (e) Any member who has not complied with the Continuing Professional Development policy within a period of four months from the date when reporting their compliance with the policy became due, shall be sent a registered letter reminding him or her that he or she is not in compliance. Should the member fail to effect compliance before the expiration of six months from the date when required to do so, he or she shall, ipso facto, cease to be a member, provided that the Council shall have power in its discretion to suspend the operation of this By-Law, either generally or in relation to a specific case, and to stipulate the conditions on which it will be suspended.
- (f) The Council shall report any cancellation of membership in terms of By-Law 29(e) to members and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

### **30. FEES AND SUBSCRIPTIONS**

- (a) Each member, other than those entitled to an exemption in terms of these By-Laws, shall pay an annual subscription at such amount as may from time to time be determined by the Council. The amount of the annual subscription in respect of any category of membership will be the amount applicable to that category on 1 January of the year in question, irrespective of any change in the category of membership during the year.
- (b) Unless and until otherwise so determined the annual subscription shall be due on the first day of January in each year and shall be payable during that month.
- (c) Any member who has paid a subscription at a rate other than that applicable to a member in public practice who commences public practice during any part of a calendar year shall be liable for the balance of the subscription applicable to members in public practice in respect of that year, unless he commences public practice after 30 June in any year when he shall be liable for one half year's subscription at the rate applicable to members in public practice in respect of such half year less one half of the subscription originally paid. It shall be incumbent upon members to inform the Secretariat when they commence public practice.

- (d) Any member admitted after 30 June in any year shall pay only one half of the annual subscription for the year then current.
- (e) The Council may in its discretion increase the rate of subscription payable by an absentee member after taking into consideration the reliance of such member on the services provided to him by the Institute; Provided that the increased rate of subscription payable shall in the case of an absentee member in public practice not exceed that of a member in public practice in Namibia and in the case of an absentee member not in public practice shall not exceed that of a member not in public practice in Namibia.
- (f) A person who at the time of his application for membership qualifies for absentee membership shall be placed on the absentee list, be an absentee member ab initio and shall pay a subscription at the rate applicable to absentee members in respect of the year in which he is admitted and for so long as he is qualified to remain on the absentee list.
- (g) If an absentee member, due to change of residence, is no longer qualified to remain on the absentee list during any part of a calendar year he shall be liable for the balance of his full subscription for that year unless such change takes place after 30 June in any year, when he shall be liable for one half of the year's subscription at the full rate less one half of the subscription originally paid.
- (h) On admission to the Institute an entrance fee shall be payable of such amount as may from time to time be determined by the Council.
- (i) The Council may in its discretion remit in whole or in part the subscription and/or entrance fee of a member under special circumstances which in its opinion warrant such remission.
- (j) The Council may from time to time call upon members, other than Honorary Life or Long Service Members, for payment of a contribution or contributions for the purpose of meeting expenses which it may incur in the interests and/or furtherance of the objects of the Institute: Provided that in respect of each category of member such contribution shall not exceed the subscription payable in any one financial year.
- (k) Any member who is in arrear with his or her annual subscription may be required to pay such penalty as may be determined by the Council from time to time. The Council shall from time to time publish the penalties payable under this By-Law.
- (l) Any member who is in arrear with his/her annual subscription or any other fee for the period stipulated in section 15 of these by-laws, shall be dealt with in terms of section 15 of these by-laws.
- (m) The Council may in its discretion reinstate any member whose membership has ceased in terms of By-Law 30(l) and may in such case dispense with a new application for membership and/or payment of an entrance fee but may impose a reinstatement fee equivalent to half of the entrance fee specified from time to time.
- (n) The Council shall report any cancellation of membership in terms of By-Law 30(l) to members and may report such cancellation to whomsoever else it considers appropriate; in whatever manner it considers appropriate.

### **31. RESIGNATION AND READMISSION**

- (a) Any member who has paid all his dues and subscriptions and is otherwise in good standing may resign his membership by sending to the Council written notice to that effect and such notice shall become effective immediately on acceptance thereof by the Council: Provided always that

- i. if any complaint is received or an enquiry is pending against any such member in respect of his professional conduct no such resignation need be accepted until such complaint or enquiry has been finally dealt with by the Council;
  - ii. if no such complaint has been received and no enquiry is pending the resignation shall be accepted by the Council;
  - iii. a member whose membership has been suspended in terms of By-Law 31(a) shall not enjoy the benefits of membership;
  - iv. any such acceptance by the Council may be qualified or endorsed through the Secretariat so as to record the finding of the Council in respect of such complaint or enquiry.
- (b) No resignation once tendered by any member may be withdrawn without the consent of the Council first having been obtained.
- (c) Any person who has resigned his membership shall be entitled to readmission on proof to the Council that he complies with the conditions of By-Law 27 at the date of his application for readmission and any other conditions that Council may determine from time to time.
- (d) The Council shall report any resignation of membership in terms of this By-law to members and may report such resignation to whomsoever else it considers appropriate; in whatever manner it considers appropriate.

## **32. PUNISHABLE OFFENCES**

The following acts and practices, whether of commission or of omission, upon the part of any person who is or was a member of the Institute at the time of the alleged acts or practices, shall be offences and such member or former member found guilty thereof after proper enquiry as provided in these By-Laws and shall be liable to the penalties in these By-Laws:

- (a) Contravening any of the provisions of the Public Accountants' and Auditors' Act, or any amendment thereof or contravening any rules or regulations created by the PAAB from time to time under the power granted to it in terms of Section 21(1)(g) of the Public Accountants' and Auditors' Act, or, in the case of a member or former member who is not registered with the PAAB, conducting himself in a manner which would amount to a contravention of the foregoing, or obtaining registration under Section 23 of the said Act by fraudulent or irregular means;
- (b) conducting himself with gross negligence in connection with any work performed by him or her in his or her profession or employment, including work or employment in connection with secretaryships, trusteeships, liquidations, judicial managements, executorships, administratorships or curatorships or any office of trust which he or she has undertaken or accepted;
- (c) certifying or reporting on any accounts, statements, reports or other documents, without taking reasonable steps to ensure the correctness of such certificate or report;
- (d) using the style or designation of Chartered Accountants (Namibia) or any abbreviation thereof as the designation of any partnership or firm of which he is a member when any other partner is not entitled to use these designations;
- (e) directly or indirectly paying a person other than a registered accountant and auditor or any person practising as an accountant or auditor outside Namibia commission for bringing him work or giving any person monetary or other consideration as a remuneration for bringing him work or for inducing other persons to give him work;
- (f) accepting directly or indirectly any commission, brokerage or other remuneration in respect of professional or commercial business referred to others as an incident to his service to any client, except with the knowledge and consent of that client;

- (g) improperly obtaining or attempting to obtain work;
- (h) soliciting or advertising or canvassing in Namibia (or in any territory outside Namibia designated by the Council from time to time) in any manner not permitted by generally accepted business ethics, or the IFAC Code of Ethics, or any other<sup>1</sup> Rules or Code of Professional Conduct or Ethics prescribed by the Council from time to time, or in a manner which may bring the profession into disrepute and shall not:
  - i. make exaggerated claims for services offered, qualifications possessed or experience gained; or
  - ii. make disparaging references or unsubstantiated comparisons to the work of another.
- (i) wilfully refusing or failing to perform or conform with or to carry out any of the provisions of these By-Laws which it is his duty to do;
- (j) committing a breach of any rule of professional conduct prescribed by the Council from time to time in terms of By-Law 17 or, after having been previously warned by the Council or any Committee appointed by it, continuing to commit a breach of such rules;
- (k) unlawfully failing to account for, or unreasonably delaying an accounting of, any money or property received for or on behalf of a client or any other person when called upon to do so;
- (l) conducting himself in a manner which, in the opinion of the Professional Conduct Advisory Committee or the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular or unworthy or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute; and
- (m) failing to comply with any regulation, rule, article or Code of Conduct;
- (n) seeking either before or during the period of training of a trainee accountant, to impose any restraint whatever on the trainee accountant concerned, which will apply after the date of the termination of the training period, or threatening, or attempting to enforce, any such restraints after such date;
- (o) directly or indirectly stipulating or receiving from a trainee accountant who is or has been serving under a training contract, or from any other person any payment, reward, compensation or consideration for agreeing to the cancellation of such training contract: Provided that it shall not be deemed a breach of these By-Laws if a member, or former member, requires to be or is reimbursed in respect of disbursements actually made by him or her to the Institute in connection with a training contract which is subsequently cancelled and of which disbursements he or she is able to produce proof to the satisfaction of the Institute;
- (p) without reasonable cause failing to resign from a professional appointment when requested by the client to do so;
- (q) failing to answer or deal with appropriately within a reasonable time any correspondence or other communication from the Institute or any other person which requires a reply or other response;
- (r) failing to comply within a reasonable time with an order, requirement or request from the Institute;
- (s) failing, after demand to pay any subscription or any fee, levy or other charge payable to the Institute.

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<sup>1</sup> All underlined text is insertions following comment on the ICAN Bylaws by the Namibia Competition Commission.

## **PART C - APPLICABLE ONLY TO TRAINEE ACCOUNTANTS**

### **33. APPLICATION FOR REGISTRATION AS A TRAINEE ACCOUNTANT**

Application for registration as a trainee accountant under a training contract shall be made to the Council in a form prescribed by the Council. Each applicant shall:

- (a) pay the registration fee, if any, and the annual levy for the current year as determined from time to time;
- (b) certify in the prescribed form that the information given by him or her therein is true and correct in every detail;
- (c) in the event of his or her registration, undertake to observe the provisions of the Constitution, By-Laws, Training Regulations and rules framed thereunder from time to time in force; and
- (d) satisfy the Council in such manner as it may require that at the date of his or her application, he or she is qualified for registration under By-Law 34, and that he or she is a fit and proper person to be registered as a trainee accountant.

### **34. QUALIFICATION FOR REGISTRATION AS A TRAINEE ACCOUNTANT**

Subject to the provisions of By-Law 33, qualification for registration as a trainee accountant shall be proof to the satisfaction of the Council that the applicant has met the entry requirements for a training contract as per the Training Regulations, prescribed by the Council.

### **35. CANCELLATION OF REGISTRATION AS A TRAINEE ACCOUNTANT**

- (a) The Council shall cancel the registration of any trainee accountant who subsequent to his or her registration as a trainee accountant:
  - i. is removed from an office of trust on account of misconduct; or
  - ii. is convicted of theft, fraud, forgery, or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine or to a fine of an amount to be determined by the Council from time to time and published by the Council for the information of the members and trainee accountants.
- (b) The Disciplinary Committee may in its discretion order the cancellation of the registration of any trainee accountant whose estate is provisionally or finally sequestrated or who enters into an arrangement with his or her creditors subsequent to his or her registration as a trainee accountant: Provided, however, that before doing so, the Disciplinary Committee shall afford such affiliate an opportunity, within 21 days after being called upon by the Disciplinary Committee to do so, to satisfy the committee that there were exceptional circumstances relating to the sequestration or arrangement which would justify the committee's not exercising its discretion to order the cancellation of his or her registration.
- (c) When the registration of a person is cancelled in terms of By-Law 35(a) or (b) the Council shall remove his or her name from the register immediately.
- (d) A person whose registration has been cancelled in terms of By-Law 35(a) or (b) may apply for his or her re-registration as a trainee accountant after the expiry of a period of 10 years reckoned from the date of such cancellation, provided, however, that the Council may on the recommendation of the Disciplinary Committee reduce this period in any particular case where it considers that it would be just and equitable to do so.

- (e) The Council shall report any cancellation of registration in terms of By-Law 35(a) or (b) to members and trainee accountants and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate: Provided that in the case of the cancellation of registration in terms of By-Law 35(b) it shall comply with any recommendation of the Disciplinary Committee.

### **36. FEES AND LEVIES**

- (a) Each registered trainee accountant shall pay an annual levy at such time and of such amount and on such conditions as may from time to time be determined by the Council.
- (b) On registration as a trainee accountant a registration fee shall be payable of such amount as may from time to time be determined by the Council.
- (c) The Council may in its discretion remit in whole or in part the annual levy and/or registration fee of a trainee accountant under special circumstances which in its opinion warrant such remission.

### **37. RESIGNATION AND RE-REGISTRATION**

- (a) Any trainee accountant who has paid all his or her dues and subscriptions and is otherwise in good standing may resign as a trainee accountant by sending to the Council written notice to that effect and such notice shall become effective immediately on acceptance thereof by the Council: Provided always that:
  - i. if any complaint has been received or an enquiry is pending against such trainee accountant in respect of his or her professional conduct, or in respect of the sequestration of his or her estate, whether provisionally or finally or his or her having entered into an agreement with his or her creditors, such resignation need not be accepted but his or her registration may be suspended until such complaint or enquiry has been finally dealt with by the Council;
  - ii. if no such complaint has been received and no enquiry is pending the resignation shall be accepted by the Council;
  - iii. a trainee accountant whose registration has been suspended in terms of By-Law 35(a) shall not enjoy the benefits of registration;
  - iv. when the resignation is accepted, such acceptance may be qualified or endorsed through the Secretariat EXCO so as to record the finding of the Council in respect of such complaint or enquiry.
- (b) No resignation once tendered by any trainee accountant may be withdrawn without the consent of the Council first having been obtained. Any person who has resigned as a trainee accountant shall be entitled to re-registration on proof to the Council that he or she complies with the conditions of By-Law 33, at the date of his or her application for re-registration.

### **38. PUNISHABLE OFFENCES**

The following acts and practices, whether of commission or of omission, upon the part of any person who is or was a trainee accountant of the Institute at the time of the alleged acts or practices shall be offences, and such trainee accountant or former trainee accountant found guilty thereof as provided in these By-Laws shall be liable to the penalties prescribed in these By-Laws: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:



- (a) wilfully refusing or failing to perform or conform with any of the provisions of these By-Laws, which it is his or her duty to do;
- (b) committing a breach of any Rule or Code of Professional Conduct or Ethics prescribed by the Council from time to time in terms of By-Law 17 or, after having been previously warned by the Council or any committee appointed by it, continuing to commit a breach of such Rules or Code of Professional Conduct or Ethics;
- (c) conducting himself or herself in a manner which, in the opinion of the Professional Conduct Advisory Committee or the Disciplinary Committee, is discreditable, improper, dishonest, irregular or unworthy, or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute;
- (d) failing to answer or deal with appropriately within a reasonable time any correspondence or other communication from the Institute or any other person which requires a reply or other response;
- (e) failing to comply within a reasonable time with an order, requirement or request from the Institute;
- (f) failing after demand to pay any fee, levy or other charge payable to the Institute.

Improper conduct on the part of a trainee accountant shall include any conduct which would be improper had it been perpetrated by a member.

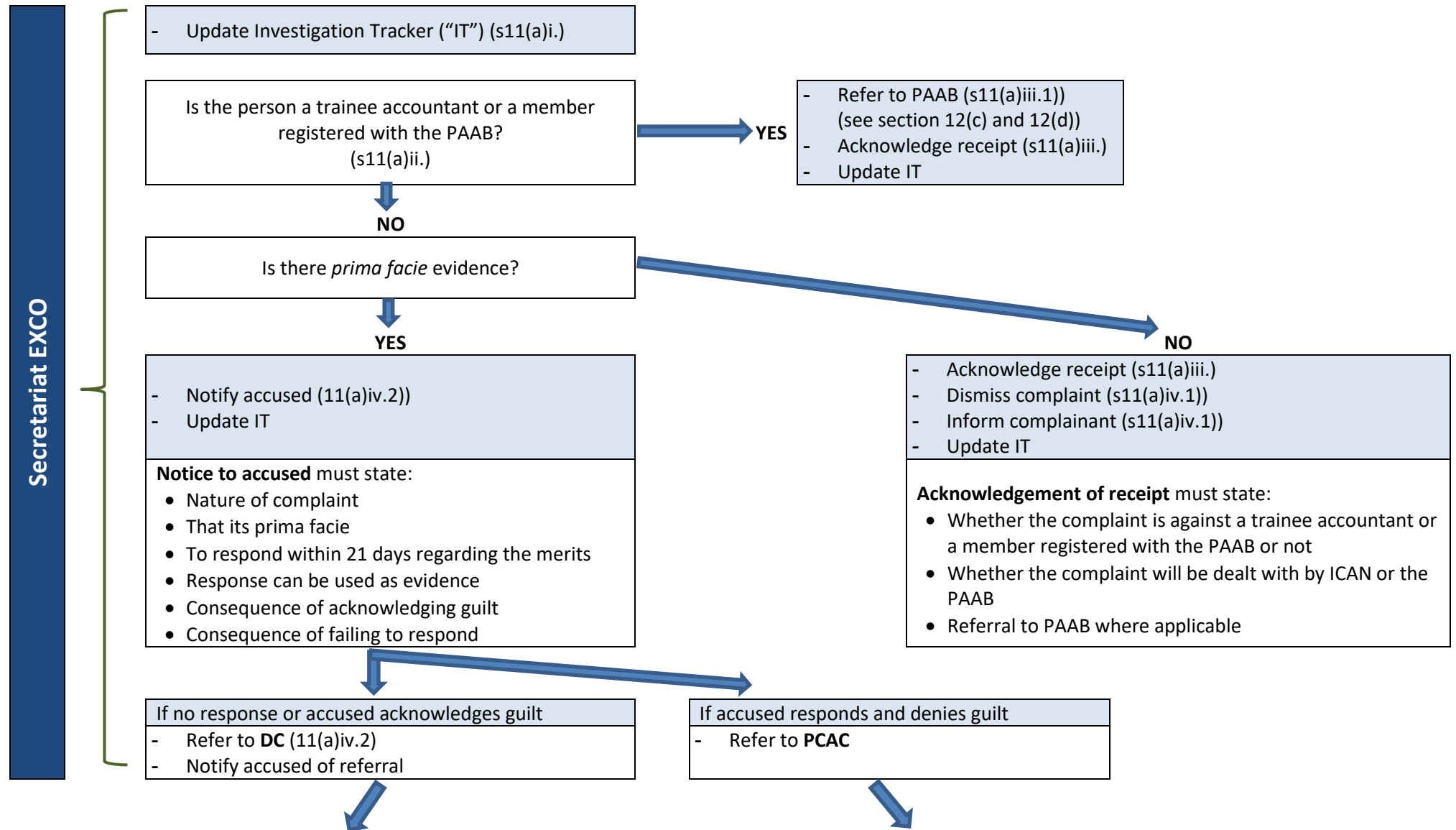
## LIST OF AMENDMENTS TO THE BY-LAWS

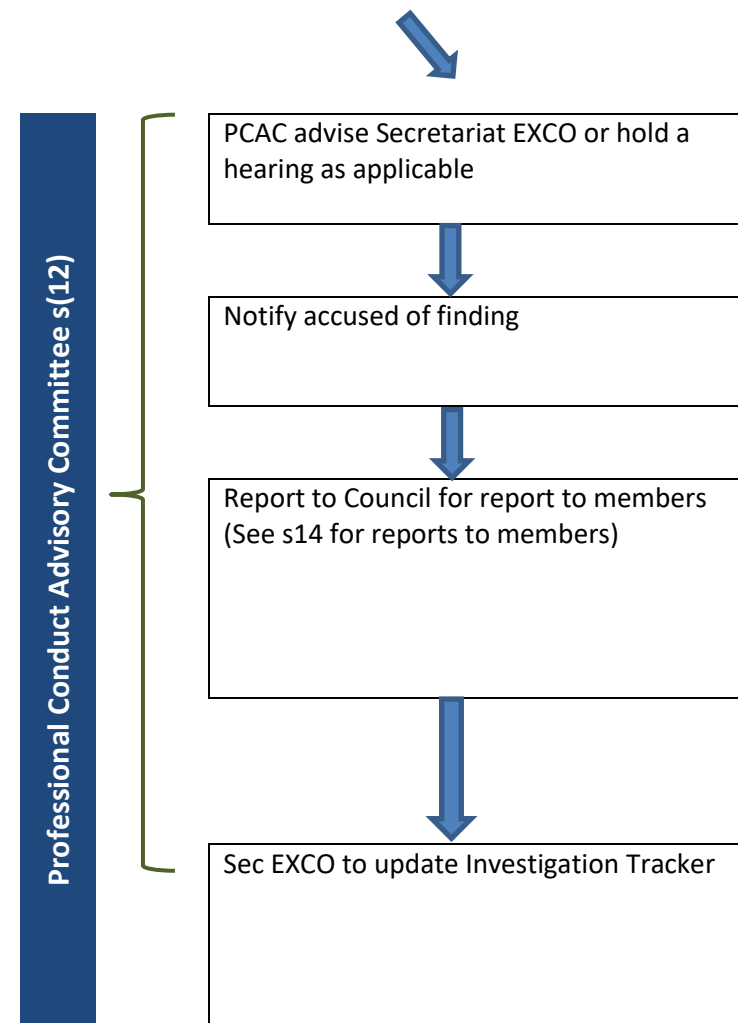
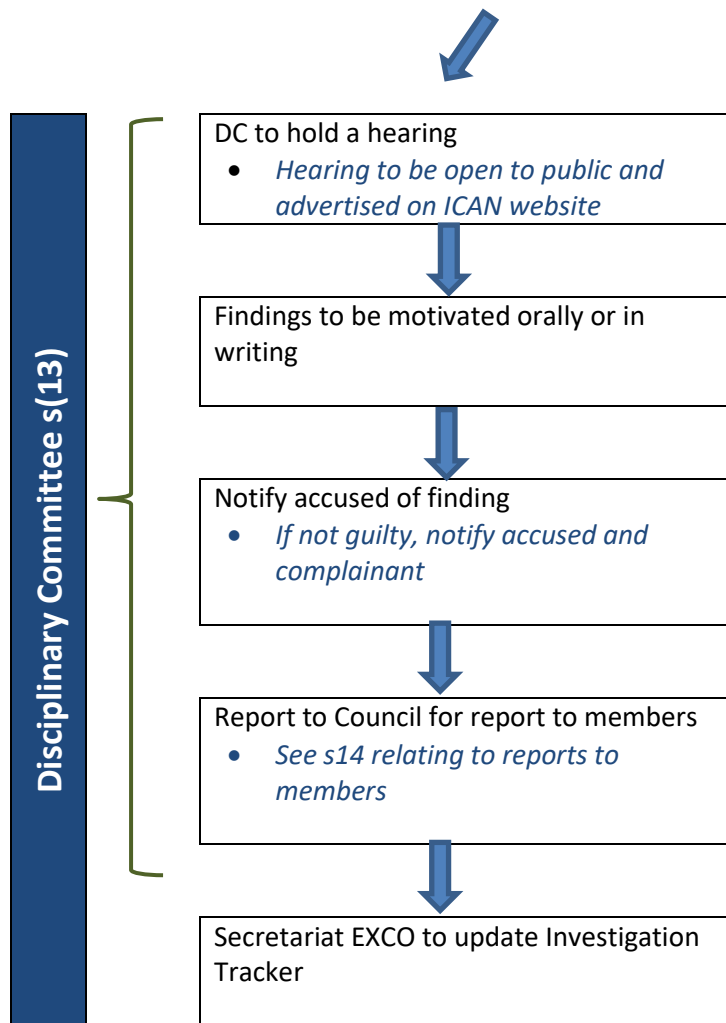
DATE	APPROVED BY	NATURE OF AMENDMENT	MOTIVATION
21.11.2017	EXCO, meeting 26.09.2017	<p>32(h) soliciting or advertising or canvassing in Namibia (or in any territory outside Namibia designated by the Council from time to time) in any manner not permitted by generally accepted business ethics, <u>or the IFAC Code of Ethics, or any other <sup>(2)</sup></u> Rules or Code of Professional Conduct or Ethics prescribed by the Council from time to time, <u>or in a manner which may bring the profession into disrepute and shall not:</u></p> <p>(i) <u>make exaggerated claims for services offered, qualifications possessed or experience gained; or</u></p> <p>(ii) <u>make disparaging references or unsubstantiated comparisons to the work of another.</u></p>	<p>Additions as underlined make the provision more specific as to the nature of the unacceptable solicitation/ advertising and clarify that it is not a general prohibition that could be considered anti-competitive.</p>
18.05.2021		<ul style="list-style-type: none"> <li>• Including definition of Secretariat EXCO, suspension and exclusion</li> <li>• Clarifying who may sanction (Only the DC)</li> <li>• Clarifying the process for dealing with complaints based on their nature (Step by step)</li> <li>• Changing the name of the Investigation Committee to match its responsibilities. (Professional Conduct Advisory Committee ("PCAC")).</li> <li>• Clarifying the duties of the DC, PCAC and Secretariat EXCO.</li> <li>• Including section re CPD and fee non-compliance.</li> <li>• Including illustrative diagram of the Disciplinary processes.</li> <li>• Clarifying that trainee accountants will be dealt with by the PAAB</li> </ul>	<ul style="list-style-type: none"> <li>• The reformatting of the secretariat (Secretariat EXCO vs CEO)</li> <li>• Revision of SAICA by-laws regarding Investigation and Disciplinary matters</li> <li>• Recommendation by the Disciplinary Committee ("DC") to clarify the difference between Suspension and Exclusion from membership.</li> <li>• Council discussion regarding the appropriateness of the Investigation Committee ("IC") having the ability to sanction members.</li> <li>• Council request regarding automatic action regarding CPD and fees non compliance</li> <li>• Clarifying media policy after practical experience to date.</li> </ul>

<sup>(2)</sup> All underlined text is insertions following comment on the ICAN Bylaws by the Namibia Competition Commission.

## APPENDIX 1 - ILLUSTRATION OF DISCIPLINARY PROCESS

### COMPLAINT RECEIVED





## MEDIA REPORTS NOTED

