

**RULES**

*These rules were adapted at a special meeting of the Institute held on 17.6.81.*

CHAPTER 1

PRELIMINARY

In these rules, unless inconsistent with the subject or context:

- (a) the "Act" means the Accountants Act 1977, Act No. 9 of 1977 and any statutory amendment thereof;
- (b) words and expressions defined in the Act shall have like meanings in these rules.
- (c) "member of the Institute" means any member other than a student member;
- (d) "the Secretary" referred to in these rules means the Secretary of the Institute for the time being by whatever title he may be called or any deputy to such person, secretary to a committee of the Council or other official appointed by the Council or any person acting in any such capacity by the direction of the Council;
- (e) words importing the singular only shall include the plural and vice versa and words importing the masculine gender only shall include the feminine gender.

CHAPTER 2

MEETINGS OF THE INSTITUTE

*Annual meeting*

1. The annual meeting of the Institute for transaction of the ordinary annual business of the Institute (namely the appointment and reappointment of auditors, the ballot to elect members of Council and the reception and consideration of the annual report of the Council and accounts of the Institute with the auditors' report thereon) shall be held in Maseru or elsewhere in Lesotho in September every year on a date to be fixed by Council.

*Special meeting*

2. The Council may whenever it thinks fit convene a special meeting of the Institute and shall do so within twenty-one days from the receipt by the Secretary of a requisition in writing signed by not less than ten members and stating the object of the proposed meeting.

*Notice of motion to be given*

3. A member wishing to bring before the annual meeting any motion not relating to the ordinary annual business of the Institute may do so provided:
  - (a) That notice in writing of the proposed motion signed by not less than 10 members entitled to vote at the Annual General Meeting be sent or given to the Secretary and be received by him not later than the 24 August, before the date of the Annual General Meeting;
  - (b) that the proposed motion relates to matters affecting the Institute or the accountancy profession.

*Notice of meeting to be given*

4. An annual or special meeting of the Institute shall be called by twenty-one days' notice in writing at the least. The Notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of the meeting and, in case of business other than the ordinary annual business of the Institute, the general nature of that business. In the case of an annual meeting, the Secretary shall also send to each member with such notice a copy of the annual report of the Council, a copy of the accounts of the Institute with the auditors' report thereon, a list of the persons nominated or deemed to be nominated as auditors and particulars of motions to be brought before the meeting under rule 3 above.

*Chairman of meeting*

5. At all meetings of the Institute the President of the Institute or in his absence the Vice-President of the Institute shall be chairman. In the absence of both, the chairman shall be elected from among the members of the Council present or in the absence of all of them then from among members present.

*Quorum at meeting*

6. Unless ten members of whom at least five are Public Accountants, be present in person at the annual meeting within fifteen minutes after the time appointed for the meeting the meeting shall stand adjourned for a fortnight to be held at the same hour and place or, if such place shall not then be available, at such other place as the Council may determine. On the date to which the meeting was adjourned the meeting shall proceed to business notwithstanding that there may be less than ten members personally present. At a special meeting, unless fifteen members of whom at least five are Public Accountants be present in person within fifteen minutes of the time appointed for the meeting, the meeting shall be dissolved.

*Adjournment of meeting*

7. Subject to the provisions of these rules the chairman of any meeting of the Institute may, with the consent of the meeting, adjourn the meeting from time to time and from place to place but no business shall

be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjourned meeting unless it be so directed in the resolution for adjournment.

*Voting at meeting and demand for poll*

- 8. (a) At any annual or special meeting of the Institute a resolution put to the vote of the meeting shall (save as provided in this rule) be decided on a show of hands unless a poll is (before or on the declaration of the show of hands) demanded by at least ten members present in person or by proxy. But a poll shall be taken without any show of hands or demand as aforesaid on any resolution to alter amend or add to these rules. The demand for a poll may be withdrawn.
- (b) No amendment shall be permitted to any resolution to alter amend or add to these rules except with the consent of the chairman of the meeting and then only if in the opinion of the chairman (whose decision shall be final) the amendment is one of form only and not of substance.
- (c) If a poll is duly demanded or is required to be taken, it shall be taken in such a manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.
- (d) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded or is required to be taken shall be entitled to a second casting vote, except that in the event of the equality of votes relating to any amendment of the rules or introduction of new rules, or the Amendment of the Accountants Act 1977 or the introduction of a new accounting act, then the chairman's casting vote shall be used in favour of the status quo ante.
- (e) A poll demanded on the election of a chairman or on any question of adjournment shall be taken forthwith. A poll demanded or required to be taken on any other question shall be taken at such time and place as the chairman of the meeting directs and any business other than that upon which a poll has been demanded or is required may be proceeded with pending the taking of the poll.

*Each member to have one vote*

- 9. On a show of hands every member present in person shall have one vote and on a poll every member present in person or by proxy shall have one vote.

*Appointment of proxy*

- 10. (a) On a poll, votes may be given personally or by proxy. The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in writing, and shall be deemed to confer authority to demand or join in demanding a poll.

- (b) A proxy must be a member of the Institute.

*Instrument appointing a proxy*

- 11. (a) The instrument appointing a proxy and the power of attorney or other authority if any under which it is signed or a notarially certified copy of that power of authority shall be sent or given to the Secretary at such place within Lesotho as the Council may from time to time prescribe, so as to be received by the Secretary not less than 48 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
- (b) The instrument appointing a proxy shall be in the following form (or as near thereto as circumstances admit) or in such other form as the Council may from time to time determine or accept.

THE LESOTHO INSTITUTE OF ACCOUNTANTS

I, \_\_\_\_\_ of \_\_\_\_\_ in the District/Reserve of \_\_\_\_\_, being a member of the above-named Institute, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ or failing him \_\_\_\_\_ of \_\_\_\_\_ each of whom is a member of the said Institute, as my proxy to vote for me on my behalf at the (annual or special, as the case may be) meeting of the said Institute to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

- (c) Where it is desired to give members an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form (or as near thereto as circumstances admit) or in such other form as the Council may from time to time determine or accept:

THE LESOTHO INSTITUTE OF ACCOUNTANTS

I, \_\_\_\_\_ of \_\_\_\_\_ in the District/Reserve of \_\_\_\_\_ being a member of the above-named Institute, hereby appoint \_\_\_\_\_ of \_\_\_\_\_ or failing him \_\_\_\_\_ of \_\_\_\_\_ each of whom is a member of the said Institute, as my proxy to vote for me on my behalf at the (annual or special, as the case may be) meeting of the said Institute to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and at any adjournment thereof.

This form is to be used in respect of the resolution (s) below-mentioned as follows:

Resolution No. 1	For	Against
Resolution No. 2	For	Against

Strike out whichever is not desired.

Unless otherwise instructed, the proxy will vote as he thinks fit.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

- (d) The Council shall, in relation to any resolution to alter amend or add to these rules, send to each member, with the notice calling the meeting at which such resolution is to be proposed, a form of proxy complying with the provisions of paragraph (c) of this rule. But save as aforesaid, and as prescribed in Chapter 3 Rule 4 (c) the Council shall not be obliged to send out forms of proxy to the members for use at any meeting or adjourned meeting of the Institute.

#### *Validity of vote by proxy*

12. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the appointer or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation shall have been received by the Secretary at the address for the time being applicable for the purposes of paragraph (a) of rule 11 above before the commencement of the meeting or adjourned meeting at which the proxy is used.

#### *Minutes of meeting*

13. Proper minutes shall be recorded of all resolutions and proceedings of meetings of the Institute and every minute signed by the chairman of the meeting to which it relates or by the chairman of a subsequent meeting shall be sufficient evidence of the facts therein stated.

### CHAPTER 3

## NOMINATION AND ELECTION OF MEMBERS OF COUNCIL

#### *Appointment of final date for receipt of nominations, polling date and notice of vacancies on the Council*

1. The Council shall in each year appoint a final date for receipt of nominations of candidates for election to the Council, which shall be not less than one week before the issue of notices for the AGM. Notice of such dates shall be sent by post to each member at his registered address not later than fourteen days before the final date for receipt of nominations. Each nomination paper duly completed in accordance with the immediately following rule must be received by the Secretary by post or otherwise at the place decided upon by the Council not later than four o'clock p.m. on the final date for receipt of nominations. The Secretary shall incorporate in the notice to members provided for in this rule particulars as to the number of vacancies to be filled at the next succeeding Annual Meeting.

#### *Eligibility of candidates for election to Council and form of nomination paper*

2. Any candidate for election to the Council must be nominated by two Public or Registered Accountant members of the Institute who shall sign his nomination

paper. Such nomination paper shall contain the name and address of the proposed candidate and the name of each of his nominators. Nomination papers shall be in such form as the Council may from time to time prescribe.

#### *Scrutineers of the Ballot*

3. (a) The President and Vice-President with two other members of the Institute (but not of the Council) one of whom shall be a Registered Accountant and one of whom shall be a Public Accountant to be nominated by the Council shall be Scrutineers of the Ballot. Notwithstanding the foregoing, in the event that either the President or the Vice-President is a candidate for election, he shall not act as a Scrutineer and his place shall be taken by another member of the Institute who is not a Council member, and whose nomination shall be in accordance with the first sentence in this rule.
- (b) On the day next following the last date for receipt of nominations in each year, the Scrutineers shall meet in a place decided upon by the Council at noon and shall examine the nomination papers; and members of the Institute shall be at liberty to attend before the Scrutineers between the hours of one and two o'clock p.m. on the said day and object to any nomination which shall have been received. The Scrutineers shall be the sole judges of the validity of each nomination.
- (c) If on examining the nomination papers the Scrutineers shall find that the number of members contained in the nominations shall be less than the minimum numbers required by the Act the Council shall nominate as many eligible members as candidates for election to the Council as it deems proper to satisfy the requirements of the Act.
4. (a) If the number of members nominated does not exceed the number of the council, the nominees will be deemed to be elected. Should the number of members nominated exceed the number of vacancies on the Council the arrangements for a ballot set out in the following paragraphs shall be made.
- (b) The Secretary shall cause voting papers to be printed in such form as the Council may from time to time prescribe indicating the number in compliance with the number of each class of member specified in the Act and containing the names and addresses of all candidates who shall have been duly qualified and nominated in accordance with these rules for election as Members of the Council, arranged in alphabetical order, with the names of the respective nominators.
- (c) The ballot shall take place in each year at the AGM. The Secretary shall provide a ballot box. The secretary shall cause to be distributed at the meeting a voting paper and an envelope to each member claiming entitlement to vote. The member shall record his vote on the voting

paper and enclose it in the envelope. On the envelope he shall record his name and signature. He shall then deposit his vote in the ballot box.

Votes may be given personally or by proxy, and members shall be so informed in the notice convening the Annual General Meeting, and a form of proxy shall be attached with the notice to each member entitled to vote, naming as proxy the president or the vice-president or the secretary or any such other person as the member desires. If a member intends to vote by proxy he shall do so in accordance with Rules 10, 11, and 12 of Chapter 2 herein.

The scrutineers of the election shall open the envelopes and ascertain that the member whose name is on each envelope is entitled to vote for the Registered Accountant or Public Accountant candidates as the case may be and the envelopes shall be preserved until after the declaration of the admissibility of each voting paper.

A member who at the time has not paid all his subscriptions due in respect of the period ending 30 June preceding shall not be entitled to vote at an election for members of the Council.

In voting, each member shall make a mark (thus X) with ink on his voting paper opposite to the name of each candidate for whom he intends to vote and he shall vote for up to as many candidates as there are vacancies to be filled. If any member votes for more candidates than the number of vacancies to be filled, his voting paper shall be rejected.

The members of the Council to be elected shall be chosen by a majority of votes; and in case of two or more members having an equal number of votes, their priority shall be decided by the majority of votes of members personally present. Should there still be an equality of votes between two or more members by lot by the Scrutineers.

The Council shall hold office until the termination of the next following Annual General Meeting.

- (d) The Scrutineers of the Ballot shall return the number of votes cast for each candidate before the termination of the Annual General Meeting at which the ballot takes place.
  - (e) The Chairman of the meeting shall announce the candidates duly elected as members of the Council.
  - (f) No ballot shall be invalid merely because of irregularity in the appointment of Scrutineers or failure on their part to comply strictly with the terms of these rules.
5. Under the Accountant's Act 1977 no Licensed Accountant may be a member of the Council of the Institute. However, Licensed Accountants may appoint each year three Licensed Accountants any one of whom may attend each meeting of the Council and participate in its proceedings, but will not be empowered to vote thereat. The appointment shall take place at the Annual General Meeting by the Licensed Accountant members present thereat, and the notice convening the meeting shall state the entitlement of the Licensed Accountant members to make such appointment, and the manner in which it shall be made

## RULES OF PROFESSIONAL CONDUCT

The rules of professional conduct are prescribed by the Council of the Lesotho Institute of Accountants under the Authority of Section 10 of the Accountants Act 1977 and are therefore applicable to Public Accountants (Lesotho), Registered Accountants (Lesotho) and Licensed Accountants (Lesotho). Therefore the term "Accountant (L)" when used in these rules includes all three tiers of Accountants.

"These rules were adopted at the General Meeting of the Institute held on 26.9.80.

### PROFESSIONAL APPOINTMENTS

1. (1) An Accountant (L) who is invited to carry out an audit or other professional work shall
  - (a) decline to do so if, in his opinion, his interest therein would conflict with his responsibilities to an existing client;
  - (b) decline to do so if he has a shareholding or other commercial interest either directly or indirectly.
  - (c) if he has not declined the invitation and the work is of a continuing nature, then ascertain whether the work has been undertaken by another Accountant (L), and, if so,
  - (d) inform the person by whom he has been invited that he is unable to accept appointment or nomination for appointment until:
    - (i) he is satisfied that the person has informed the existing Accountant (L) of the intention to make the change; and
    - (ii) he has thereafter communicated with the Accountant (L) whom he would succeed;
  - (e) without undue delay communicate with the latter in order to ascertain whether there is any professional reason why he should not accept such appointment or nomination and shall not accept such appointment or nomination if, in his opinion, there is any such professional reason.
1. (2) Where the appointment of an auditor is required by law it is permissible for the Accountant (L), after following the procedure set out in sub-rule (1), to allow himself to be nominated as auditor, but shall take no steps to secure his appointment.
1. (3) An Accountant (L) shall respect the right of a client to appoint whom he wishes subject to the right to represent himself under the appropriate legislation, to carry out professional work. Where the procedure set out in sub-rule (1) has been followed, an Accountant (L) shall not resist relinquishing an appointment if his client so wishes.
1. (4) An Accountant (L) who is employed by another Accountant (L) in public practice shall not undertake professional work on his own account or in partnership except with the written consent of his employer.
1. (5) An Accountant (L) who is employed by another Accountant (L) in public practice shall not, before, on or after leaving the employ of the latter attempt either directly or indirectly to influence the transfer to him or to any other person of professional work presently undertaken by the Accountant (L) by whom he is or was employed. If, while still so employed, he is approached by a client of his employer about the possibility of transferring such professional work, he shall decline to discuss the matter and shall inform his employer immediately. If approached after leaving such employment he shall follow the procedure laid down in sub-rule (1).
1. (6) In the following sub-rules (7) to (10)-
  - (i) The term "existing accountant" means an Accountant (L) in public practice, or the firm of which he is a partner, who currently holds an audit appointment or carries out taxation or other accountancy work;
  - (ii) The term "consultant" means an Accountant (L) or firm, or company as envisaged in Rule 6, which is consulted in order to meet the needs of the client.
1. (7) When a consultant is asked, otherwise than directly by the existing accountant, to provide advice or services, he should enquire whether the client has an existing accountant. If so, he should inform the client of the consultant's professional obligation to communicate with the existing accountant and he should at once inform the existing accountant, preferably in writing, that he has been approached by the client and should indicate the general nature of the request. In certain exceptional cases the client may insist that the existing accountant should not be informed. For such a request to be acceded to, the reasons advanced would have to be most exceptional indeed. The consultant should decide whether the reasons advanced by the client for not informing the existing accountant are acceptable and, in case of doubt, may refer in writing, without disclosing the names of the parties involved, to the President or in his absence the Vice-President of the Institute. A mere disinclination by the client for communication with the existing accountant would be an unsatisfactory reason.
1. (8) Whatever the nature of the introduction, the consultant should, in so far as it is practicable, ensure that the existing accountant is kept informed as to the general nature of the work which the consultant is doing. This should be done either by the consultant himself or, if the client so requests, by the client. The existing accountant for his part should keep in touch with the con-

sultant so as to give him any assistance within his power. From time to time the consultant may be asked by the client to undertake additional work of a type which is clearly distinct from that originally undertaken. In such cases the consultant should regard this as a separate request to provide advice or services and should communicate with the existing accountant as indicated in subrule (7).

1. (9) An Accountant (L) called upon to render service of whatever kind to the client of another Accountant (L) who is continuing in his relationship with that client has not merely the negative duty of refraining from soliciting any work which is being performed by that other Accountant (L) but the positive duty of taking all steps reasonably open to him to support the other Accountant (L) in retaining his relationship. The latter has an equivalent duty to his professional colleague to support the relationship between the client and the consultant.
- 1.(10) Members undertaking professional or consulting work outside Lesotho shall be bound by the Rules of Professional Conduct.

#### SIGNING OF REPORTS OR CERTIFICATES

2. An Accountant (L) in public practice shall not delegate to any person who is not his partner, his power to sign audit or other reports or certificates. In specific cases where emergencies of sufficient gravity arise, however, this prohibition may be relaxed, provided the full circumstances giving rise to the need for delegation are reported both to the client of the Accountant (L) concerned and to the Institute.

#### QUOTATIONS FOR PROFESSIONAL WORK

3. An Accountant (L) shall not quote or tender for any professional work in competition with another Accountant (L) subject thereto—  
If an Accountant (L) is requested to quote for an audit or other professional work, the quotation shall take the form of a charge per day for his own and/or his assistant's time. There is no objection, however, to his giving a client an estimate of the probable cost of the work.
4. (1) An Accountant (L) and Auditor shall base his fees for professional work on the time occupied, the responsibilities, the nature and intricacy of the work and the specialised knowledge involved.
4. (2) An Accountant (L) and Auditor shall not charge or attempt to charge an excessive fee for professional work.

#### PRESS ARTICLES: ADVERTISEMENT FOR STAFF: DELIVERY OF LECTURES: PUBLICITY GENERALLY

5. (1) An Accountant (L) and Auditor shall not use or allow publicity or any unfair means of gaining professional advancement or advantage, nor shall he unduly bring his name with his professional qualifications before the notice of the public. An Accountant (L) and Auditor who holds appointment as a director, officer or employee is encouraged, however, to permit his professional designation, or the recognised abbreviated form thereof, to be shown after his name in any reference to such appointment. Provided that, for the purposes of this sub-rule, a professional designation shall not include the expressions "accountant and auditor" or any indication that he is in public practice.
5. (2) An Accountant (L) and Auditor in public practice shall not use on his professional letter-heads, nameplates, office doors or windows, envelopes or other stationery used in connection with his professional practice, any designation other than an approved designation, nor shall he permit any other person to use, in reference to his professional practice, a designation other than an approved designation.

#### COMPANIES AND PARTNERSHIPS WITH PERSONS WHO ARE NOT IN PUBLIC PRACTICE

6. An Accountant (L) in public practice—
  - (1) who—
    - (a) has direct or indirect interest as shareholder or otherside in a company: or
    - (b) on his own account or in partnership with a person who is not in public practice carries out work of a type commonly performed by an Accountant (L) in public practice, shall not use such company or partnership or permit it to be used by way of advertisement or otherwise as a means of attracting to himself any work of a type commonly performed by an Accountant (L) in public practice.
  6. (2) who—
    - (a) either solely or in conjunction with another Accountant (L) controls directly or indirectly as shareholder or otherwise a company which conducts operations or renders services of a type commonly performed or rendered by an Accountant (L) in public practice and which a company is legally permitted to conduct or render; or
    - (b) in partnership with a person not in public practice carries out work or renders services of a type commonly performed or rendered

by an Accountant (L) in public practice but not exclusively reserved by the Act for an Accountant (L) engaged in public practice,

shall not allow such company or partnership to adopt methods of attracting to itself work of a type commonly performed by an Accountant (L) in public practice which may not be adopted by an Accountant (L) in the conduct of his professional practice, nor shall he allow such company or partnership to include in its name or title any word descriptive of any work of a type commonly performed by an Accountant (L) in public practice; Provided that the word "trust" shall not be regarded as such a word: Provided further that the word "consulting" or "consultant" may be used in describing the activities of such company or partnership but not in conjunction with the word "accountant" or "accounting" or the word "auditor" or "auditing".

6. (3) who operates through the medium of a company such as is referred to in paragraph (a) of sub rule (2) shall be responsible for his proportionate share of the debts and obligations of such a company, and shall, accordingly, operate only through the medium of an unlimited company.
6. (4) who operates through the medium either of a company such as is referred to in paragraph (a) of sub-rule (2) and sub-rule (3) or in partnership with a person not in public practice -
  - (a) shall ensure that neither he, nor such company, nor such partnership nor any individual partner thereof contravenes any provision of the Act or Disciplinary Rules or of these Rules of Professional Conduct and if he is unable to ensure this he shall forthwith cease to be connected or associated in any way with such company or, as the case may be, shall withdraw from such partnership:
  - (b) may, if he is a director or officer of such a company or a partner in such a partnership, use after his name on such company's or such partnership's stationery the designatory letters of his professional qualifications, but not the designation in full:
6. (5) Subject to the provisions of rule 6, an Accountant (L) shall not under the guise or through the medium of a company do anything which it would not be permissible for him to do if he were operating otherwise than through a company.

#### CRITICISM OF PROFESSIONAL COLLEAGUES

7. An Accountant (L) shall not criticise to any member of the public the professional work of, professional attainment of, or the professional fees charged by, any other Accountant (L). When, however, in his opinion he has a duty to comment adversely to any

person, other than a member of the public, on any of these matters, he may make such comment but only after discussion with the colleague concerned.

#### COMPETITORS' STAFF

8. An Accountant (L) shall not directly offer employment to an employee of another Accountant (L) without first informing the latter: Provided that an employee of another Accountant (L) who, in response to an advertisement or of his own initiative, applies to him for employment, may be engaged subject to his informing the applicant's present employer.

#### PROFESSIONAL INTEGRITY

9. An Accountant (L) in the practice of his profession or in the course of his service to his employer shall give his services with absolute fidelity, shall be activated by a spirit of fairness to his client, employer and fellow Accountant (L) and, by his actions, shall endeavour to enhance the reputation and dignity of the profession.

#### IMPROPER CONDUCT - DISCIPLINARY RULES OF THE LESOTHO INSTITUTE OF ACCOUNTANTS

10. An Accountant (L) shall not conduct himself in a manner which constitutes improper conduct as set out in the Disciplinary Rules of the Lesotho Institute of Accountants.

#### DEFINITIONS

11. In these rules -
  - (a) words in the singular number shall include the plural;
  - (b) "professional work" shall be construed as including any work type commonly performed by an accountant and auditor in public practice;
  - (c) the expression "the Act" means the Accountants Act, 1977, and any expression to which a meaning has been assigned in the Act, bears, when used in these rules, the meaning so assigned, unless otherwise defined under the Rules of Professional Conduct.
  - (d) Reference to the masculine gender shall be deemed to include the feminine.

#### INTERPRETATION

12. The interpretation of the Rules of Professional Conduct shall be at the sole discretion of Council.

Access to include the female

### INTERPRETATION

1. The interpretation of the Rules of Procedure shall be the responsibility of the Secretary-General.

### CRITERIA FOR THE SELECTION OF MEMBERS

1. All members of the Commission shall be elected by the General Assembly of the United Nations on the basis of the criteria set forth in the Rules of Procedure.



## DISCIPLINARY RULES

Promulgated under the Accountants Act 1977 (Section 7 and sections 19, 21 and 22) and adopted at the General Meeting of the Institute held on 26.9.80, as amended at the General Meeting of the Institute held on 6.12.1982.

### FOREWORD

As a general statement of policy and without prejudice to the Rules hereunder, a member of the Institute shall be liable to disciplinary action in accordance with these Rules:

- (a) if, in the course of carrying out his professional duties or otherwise, he has been guilty of any act or default likely to bring discredit upon the Institute or the accountancy profession (and in the case of a student any act or default of such a nature as to render him unfit to become a member of the Institute). Without prejudice to the generality of the foregoing, the fact that a member has been convicted by a court of competent jurisdiction in Lesotho or elsewhere of any offence involving dishonesty, violence or indecency or has in any civil proceedings been found to have acted fraudulently or dishonestly shall be conclusive proof that he has been guilty of misconduct;
- (b) if he has committed any breach of these Rules.

### INTERPRETATION

1. In these rules:

- (a) "Committee" means the Disciplinary Committee established by the Council in accordance with the provisions of sections 19 and 21 of the Act to which in terms of subsection (2) of section 21 the Council shall have assigned all or any of its powers to enquire into cases of alleged improper conduct and to impose punishments in respect thereof;
- (b) "Secretary" means the secretary of the Lesotho Institute of Accountants.
- (c) the expression "the Act" means the Accountants Act 1977 and any expression to which a meaning has been assigned in the Act bears, when used in these rules, the meaning so assigned.
- (d) the expression "a member" means a member of the Lesotho Institute of Accountants.
- (e) the expression "student" or "student member" means a student who is registered as such with the Institute.

### COMMITTEES

2. (a) The Disciplinary Committee appointed by Council under Section 19 of the Act shall consist of five members of the Council of whom the majority shall be Public Accountants".

- (b) Any Investigation Committee appointed by Council under Section 21 of the Act shall consist of three members of Council, of whom two shall be Public Accountants and three members of the Investigation Committee shall constitute a quorum at any sitting.

- (c) No member of the Council shall be a member of both the Investigation and Disciplinary Committees at the same time.

### WHAT CONSTITUTES IMPROPER CONDUCT AND PUNISHMENTS THEREFOR

3. (1) On the understanding that the Committee is empowered by section 21 of the Act to enquire into and deal with any complaint, charge or allegation which may be laid before it, and to impose any of the punishments hereinafter set forth in respect of any improper conduct, and on the understanding further that the acts or omissions specified in paragraphs (a) to (o) of this subrule are not intended to be a complete list of acts or omissions which may constitute improper conduct on the part of a member of the Institute and which are punishable in accordance with the provisions of this rule, any member shall be guilty of improper conduct if he -

- (a) contravenes or fails to comply with any provisions of the Act with which it is his duty to comply;
- (b) contravenes or fails to comply with any provision of any other Act with which it is his duty to comply in his capacity as accountant and auditor to an undertaking or in doing work of a type commonly performed by a member;
- (c) commits an offence involving dishonesty, and in particular (but without prejudice to the generality of the foregoing) theft, fraud, forgery or uttering a forged document, perjury, bribery or corruption;
- (d) is dishonest in the performance of any duties devolving upon him in relation to -
  - (i) any work of a type commonly performed by a member of the Institute or
  - (ii) any office or trust which he has undertaken or accepted;
- (e) without reasonable cause or excuse fails to perform any work or duties commonly performed by a member of the Institute with such degree of care and skill as in the opinion of the Council may reasonably be expected;
- (f) with intent to evade or to assist any other person to evade any tax, duty, levy, or rate whatsoever (whether the same be payable to

the Government or to a provincial administration or to a local authority or to any other body or authority in Lesotho)-

- (i) knowingly or recklessly prepares or makes, or assists any other person to prepare or make, any false statement (whether such statement be oral or in writing); or
- (ii) signs any false statement in relation thereto recklessly or knowing it to be false; or
- (iii) knowingly or recklessly prepares or maintains any false books or account or other records;
- (g) fails to maintain in a bank account, separate from his own account and appropriately designated, all moneys for which he is liable to account to a client;
- (h) divulges to any third party, whether orally, in writing or otherwise, any confidential information which he may have obtained in the course of his professional relations with any client or employer including any information obtained by him as to the business affairs, the trade secrets or the technical methods or processes of such client or employer, unless such client or employer (or, in the case where such client or employer is deceased, the executor of his estate) has expressly consented to such information being so divulged, or unless the member of the Institute is obliged by law so to divulge it, or unless in good faith divulges it to the Council in order that the Council may consider whether it should exercise any of the powers, duties or functions vested in it by the Act of these Rules;
- (i) makes or fixes or attempts to make, fix or recover, or enters into an agreement or associates himself in any way with any other person for the purpose of making, fixing or recovering any fee, charge or other consideration for professional services or services of a type commonly performed by a member of the Institute which have been or are to be rendered by him, which, whether wholly or in part, is in any way contingent upon the results of such services. Provided that this rule shall not apply to the following:
  - (i) Fees fixed or taxed by the proper authority in respect of the compulsory liquidation or the judicial management of any company or the administration of the estate of a deceased or insolvent person or person under other legal disability and fees fixed by a member of the Institute in respect of voluntary liquidation of any company on the basis of the fees which would have been recoverable had the liquidation been a compulsory liquidation;
  - (ii) commission paid to an executor, trustee, administrator or agent, the amount of which is based on the income collected by him;
  - (iii) fees paid to a director of a company, the amount of which is based on the dividends declared or the profits earned by such company;
  - (iv) remuneration paid to a manager of a business, the amount of which is based on a percentage of the earnings or profits of such business;
  - (v) commission paid in respect of any type of insurance business or in respect of the sale of movable or immovable property or in respect of the collection of debts or in respect of the raising of loans;
- (j) except with the consent of his client, directly or indirectly stipulates for or receives from any third party (other than a member of the Institute engaged in public practice or a person practising as an accountant and auditor outside Lesotho) any reward for anything done by him in the course of or in connection with the services rendered by him to such client;
- (k) permits his name to be used in connection with any estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the estimators;
- (l) solicits by personal canvass, by advertising, by correspondence, by circulars, by offering or paying a reward or by any other means, professional work or any other work of a type commonly performed by a member;
- (m) seeks either before or during the period of articles of clerkship to impose any restraint whatever on the clerk concerned applying after the date of termination of the articles or enforces, or threatens or attempts to enforce, any such restraint after such date;
- (n) directly or indirectly stipulates for or receives from a clerk who is or has been serving under articles of clerkship or from any other person any payment, reward, compensation or consideration for agreeing to the cancellation of such articles of clerkship: Provided that it shall not be deemed a breach of this rule if a member requires to be or is reimbursed in respect of disbursements actually made by him in connection with the registration of articles of clerkship which are subsequently cancelled and of which disbursements he is able to produce proof to the satisfaction of the Council;
- (o) conducts himself in a manner which is discreditable on the part of a member or

which tends to bring the profession of accounting into disrepute.

3. (2) A member shall be liable on conviction on a charge of improper conduct to one or more of the following punishments:
  - (a) a caution;
  - (b) a reprimand;
  - (c) a fine not exceeding M1,000;
  - (d) suspension from practice for a period specified by the Council or the appropriate committee;
  - (e) removal of his name from the register of members;
  - (f) qualified, temporary or permanent disqualification from membership of the Institute.
3. (3) A student shall be liable on conviction on a charge of improper conduct to one or more of the following punishments:
  - (a) that he be declared unfit to become a member of the Institute.
  - (b) that he be declared unfit to become a member of the Institute for such a period not exceeding two years as shall be specified by the Committee.
  - (c) that he be declared ineligible for such period (not exceeding two years) to sit for such examination or examinations of the Institute (or such part or parts thereof) as shall respectively be specified by the Committee.
  - (d) that he be reprimanded.
  - (e) that he be cautioned.

#### METHOD OF ENQUIRY INTO ALLEGATIONS OF IMPROPER CONDUCT

4. (1) It shall be the duty of the secretary to lay before the Committee any allegations, facts or circumstances which may come to his notice and which prima facie appear to indicate that any member (hereinafter referred to as the accused) may have been guilty of improper conduct: Provided that in the case of alleged improper conduct reported to the Committee, the person making the complaint or charge or allegation hereinafter referred to as the complainant) shall furnish a written statement in the form wherever possible of an affidavit detailing in precise terms the specific acts or failure complained of: Provided further that in any case where the secretary has in his possession prima facie evidence that such person has contravened any of the provisions of Rule 3 (1) he may, in his discretion, advise the accused in writing of the nature of the conduct imputed to him and afford him an opportunity of giving an explanation or answer in writing, within 30 (thirty) days after the date of such notice, and at the same time warn him that such explanation or answer may be used in evidence against him.
4. (2) Subject to the first proviso to subrule (1), the Committee shall consider any allegations, facts or circumstances laid before it by the secretary in terms of that subrule and may make such enquiries (including enquiries of the accused) and obtain such legal or other advice, assistance or information in connection therewith as it considers necessary: Provided that whenever enquiries are made of the accused, he shall be warned that any explanation, answer or information may be used in evidence against him.
5. If either before or after making such enquiries and obtaining such advice, assistance or information as it may consider necessary in any particular case, the Committee is unanimously of the opinion that the conduct imputed to the accused does not constitute improper conduct it may decide not to proceed further in the matter and shall advise the complainant, if any, accordingly.
6. If the Committee has reason to believe that the accused has been guilty of improper conduct, it shall, except in cases where this action has already been taken by the secretary in terms of the second proviso to Rule 3 (1) advise him by notice in writing of the nature of the conduct imputed to him and afford him an opportunity of giving an explanation or answer in writing within 30 (thirty) days after the date of such notice, and at the same time warn him that such explanation or answer may be used in evidence against him.
7. If on receipt of an explanation or answer from the accused, the Committee is satisfied that:
  - (a) the accused has given an acceptable explanation or answer in regard to the conduct imputed to him; or
  - (b) the conduct imputed to the accused does not constitute improper conduct; or
  - (c) there is no reasonable prospect of proving that the accused has been guilty of the conduct imputed to him, it may decide not to proceed further in the matter and shall advise the complainant, if any, accordingly.
8. If the accused admits that he has been guilty of the improper conduct imputed to him, the Committee shall invite the accused to make representations in regard to the punishment to be imposed, and shall afford him a reasonable time within which to make such representations or submissions. Thereafter, having considered any such representations or submissions, the Committee may impose upon the accused any punishment which it may be competent to impose.
9. Any case of alleged improper conduct not disposed of as provided for in Rule 5, 7 or 8 shall form the

subject of a hearing or enquiry to be conducted by the Committee in accordance with the procedure set out in Rules 10 to 24 hereafter.

#### PROCEDURE AT HEARING OR ENQUIRY

10. (1) In the case of alleged improper conduct which is to form the subject of a hearing or enquiry, the secretary shall notify the accused as nearly as possible in the form of Annexe A to these rules of the nature of the charge preferred against him. At the same time the accused shall be furnished with a copy of these rules and be warned that any written answer which he may make to the charge may be used in evidence against him.
10. (2) The notice Referred to in subrule (1) shall be served on the accused at his registered address, or, in the absence thereof at his last known address, provided that the accused shall be permitted to waive, in writing, the provisions of this subrule.
11. (1) In all cases where the complainant or accused expresses a desire to have witnesses subpoenaed to give evidence or where the Committee itself desires to subpoena any witness including the complainant, the chairman of the Committee or a person authorised by the Committee shall sign the necessary subpoenas, which shall be as nearly as possible in the form of Annexe B to these rules.
11. (2) Where the accused expresses a desire to have a witness subpoenaed to give evidence he shall deposit with the Committee a sum of money sufficient to cover the costs of subpoenaing such witness, from which sum such costs shall be paid, any balance remaining being refunded to the accused.
11. (3) All verbal evidence may be taken on oath or affirmation which shall be administered or accepted by the chairman of the Committee or a person authorised thereto by the Committee.
12. (1) Whenever any case of alleged improper conduct is to form the subject of a hearing or enquiry, the Committee may appoint an attorney or advocate or the secretary (hereinafter referred to as the pro forma complainant) and if a pro forma complainant is appointed all evidence in support of the charge preferred against the accused shall be led and produced by the pro forma complainant.
12. (2) Where a pro forma complainant is appointed to act at a hearing or enquiry, the Committee may appoint one or more of its members to assist him: Provided that a member of the Committee who is appointed to assist the pro forma complainant or who has, as such a member, investigated any allegations, facts or circumstances relating to the question whether a member of the Institute has been guilty of improper conduct, shall not sit as a member of the Committee by which a hearing or enquiry relating to such allegations, facts or circumstances is held.
13. Where the accused is present in person at a hearing or enquiry at which a pro forma complainant has been appointed to act, the order of procedure shall be as follows:
  13. (1) The chairman of the Committee or the secretary shall read the notice of the hearing or enquiry addressed to the accused unless the accused or his representative duly authorised in writing agrees to dispense with the reading of such notice.
  13. (2) The pro forma complainant shall state his case and then produce his evidence in support of it. The accused or his representative duly authorised in writing shall be entitled to cross-examine the witnesses produced by the pro-forma complainant.
  13. (3) At the conclusion of the case presented by the pro forma complainant the accused shall be afforded the opportunity of stating his case or defence either by himself or by his representative duly authorised in writing, and thereafter of leading his evidence in support thereof. If he states his defence in writing his statement shall be read. The pro forma complainant shall be entitled to cross-examine the accused (if he has elected to give evidence) and all his witnesses.
  13. (4) At the conclusion of the case for the accused the Committee shall, whether the accused has produced evidence or not, hear the pro forma complainant on the case generally but shall hear no further evidence unless in a special case it may think it just to receive such further evidence. At the conclusion of the address of the pro forma complainant the accused or his representative duly authorised in writing, shall be entitled to address the Committee on the case in defence of the accused. The pro-forma complainant shall not be entitled to reply to such address unless -
    - (a) the accused or his said representative has produced further evidence after the address of the pro forma complainant, in which event such reply shall be confined to matters arising out of such evidence, or
    - (b) the accused or his said representative has in his address raised any matter of law, in which event such reply shall be confined to the matter of law so raised.
  13. (5) Where a witness is produced by any party such witness shall first be examined by the party producing him, and then cross-examined by the adverse party and then re-examined by the party producing him.
14. Where the accused is not present or represented at a hearing or enquiry at which a pro forma

complainant has been appointed to act, the order of procedure shall be as follows:

14. (1) Proof of service on the accused of the notice of hearing or enquiry shall be produced to the Committee, but it shall not be necessary for such notice to be read unless the chairman of the Committee directs that it shall be read.
14. (2) The pro forma complainant shall state his case and then produce his evidence in support of it.
14. (3) For the purposes of paragraph (2) hereof it shall not be necessary for formal evidence to be given on oath and the Committee may consider and take cognisance of any written statement or evidence produced as evidence by the pro forma complainant.
15. Where a hearing or enquiry at which a pro forma complainant has been appointed to act, is being conducted and the accused or his representative duly authorised in writing notifies the Committee that the accused pleads guilty to one or more of all of the charges, the Committee may in its discretion find the accused guilty on such charge or charges without hearing any evidence or after hearing such evidence as it may think fit. In that event the following procedure shall be followed:
  15. (1) The accused or his said representative shall be entitled to lead evidence in mitigation. The pro forma complainant shall be entitled to cross-examine the accused (if he has elected to give evidence) and all his witnesses and to lead evidence in rebuttal. The accused or his said representative shall be entitled to cross-examine any witnesses called by the pro forma complainant. Any witness (including the accused) may be re-examined by the party producing him.
  15. (2) At the conclusion of such evidence or in the absence thereof the pro forma complainant shall be entitled to address the Committee on the question of the punishment to be imposed on the accused. At the conclusion of such address the accused or his said representative shall be entitled to address the Committee on the said question. The pro forma complainant shall not be entitled to reply to such address unless the accused or his said representative has in his address raised any matter of law in which event such reply shall be confined to the matter of law so raised.
16. Where the accused is present in person at a hearing or enquiry at which a pro forma complainant has not been appointed to act, the order of procedure shall be as follows:
  16. (1) The chairman of the Committee or the secretary shall read the notice of the hearing or enquiry addressed to the accused unless the accused or his representative duly authorised in writing agrees to dispense with the reading of such notice.
  16. (2) The Committee shall hear and examine such witnesses, if any, as it has subpoenaed to give evidence in relation to the charge or charges preferred against the accused. The accused or his representative duly authorised in writing shall be entitled to cross-examine any such witness.
16. (3) At the conclusion of the case presented against him the accused shall be afforded the opportunity of stating his case or defence, either by himself or by his representative duly authorised in writing, and thereafter of leading his evidence in support thereof. If he states his defence in writing, his statement shall be read.
16. (4) At the conclusion of the case for the accused the latter or his representative duly authorised in writing shall be entitled to address the Committee on the case in defence of the accused.
17. Where the accused is not present or represented at a hearing or enquiry and a pro forma complainant has not been appointed to act at such hearing or enquiry, the Committee may adopt such procedure as it may, at its entire discretion, deem fit and may consider and take cognisance of any statement, evidence or information, whether written or verbal, which may be placed before it.
18. Where a hearing or enquiry at which a pro forma complainant has not been appointed to act, is being conducted and the accused is not present or represented, but has notified the Committee that he pleads guilty to one or more or all of the charges, the Committee may in its discretion find the accused guilty on such charge or charges without hearing any evidence or after hearing such evidence as it may think fit, and may consider and take cognisance of any statement, evidence or information, whether written or verbal, in mitigation which may be placed before it.
19. Where a hearing or enquiry is being conducted and any person whose evidence may be material has not been called as a witness either by the pro forma complainant or by the accused, the Committee may call such person as a witness.
20. Members of the Committee may, through or with the permission of the chairman, put such question to the complainant, the accused (if he has elected to give evidence) or the witness as they think desirable.
21. The pro forma complainant may, with the consent of the Committee, withdraw any charge at any time before a finding has been made thereon.
22. Any decision of the Committee with regard to any point arising in connection with, or in the course of a hearing or enquiry may be arrived at in camera.
23. (1) The Committee may depart from the procedure laid down in these rules when in its opinion it is expedient and reasonable to do so provided the accused or his representative duly authorised in writing agrees thereto.
23. (2) Where any matter of procedure arises for which no provision is made in these rules, the Committee shall at its discretion determine what procedures shall be followed.

- 23. (3) Any departure from the provisions of these rules shall not invalidate the proceedings at a hearing or enquiry, unless such departure caused or was calculated to cause substantial prejudice or injustice to the accused.
- 24. Upon the conclusion of the proceedings at a hearing or enquiry the Committee shall deliberate upon the case in camera, and the finding and sentence, if any, shall be communicated to the parties by the secretary forthwith or at such later date as the committee shall decide.

**GENERAL**

- 25. Whenever the Committee acts in terms of rule 5, 7, 8 or 24 it shall report its action to the Council.
- 26. The Committee shall cause to be kept, in a form appropriate to the nature of any particular hearing or enquiry, a record of the proceedings at such hearing or enquiry.
- 27. If as a result of an order or decision made pursuant to these Rules a member is excluded or suspended from membership he shall thereupon forthwith deliver up to the Secretary all certificates specified by the Disciplinary Committee.
- 28. The Council may at any time, of its own motion or on the application of the defendant, modify or rescind any order made by the Disciplinary Committee on such terms and conditions (if any) as the Council considers appropriate. If so requested by the defendant, the Council shall publish any decision modifying or rescinding an order as aforesaid in such manner as it thinks fit.

**ANNEXE A**

**FORM OF NOTIFICATION**

To .....

You are hereby notified that a hearing/an enquiry in terms of section 21 of the Accountants Act 1977 will be held at ..... upon the ..... day of ..... 19 ..... at ..... o'clock a.m./p.m. by the ..... when the following charge which has been preferred against you will be considered .....

You are hereby notified that you are entitled to appear at such hearing/enquiry by yourself or to be represented thereat by some other person duly authorised, in writing, on your behalf and that you may produce evidence, call and examine witnesses on your behalf and cross examine other witnesses.

Should you desire that your letter, dated ..... or any further written communication which you may make should constitute your explanation or defence, please notify me to that effect as soon as possible and

by not later than ..... but you are hereby warned that any such communication may be used in evidence at such hearing/enquiry.

You are hereby advised that your record of previous convictions (if any) by the Council of the Institute or of any Committee thereof, will be taken into consideration in determining the sentence to be imposed on you should you be found guilty of the charges set out above.

Should you fail to appear the .....

..... may consider and deal with the charge in your absence in accordance with the relative rules.

A copy of the relative rules is enclosed.

Given under the hand of the secretary this .....

..... day of ..... 19.....

..... Secretary, Lesotho Institute of Accountants.

**ANNEXE B**

*Form of Subpoena*

To .....

You are hereby required to appear in person

..... upon the ..... day of .....

..... 19 ..... at ..... o'clock a.m.

p.m., before the ..... in the matter of a hearing enquiry in terms of section 21 of the Accountants Act,

1977 in relation to the conduct of Mr. .... and to bring with you and then produce at the time and place as aforesaid the several documents specified in the list hereunder, and then and there to testify all and singular those things you know in relation to the said hearing/enquiry.

**LIST OF DOCUMENTS TO BE PRODUCED**

.....

Given under the hand of the .....

of the ..... this .....

day of ..... 19.....

**CAPACITY OF SIGNATORY**