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THE INVESTMENT AND FINANCIAL ANALYSTS ACT

CHAPTER 542

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CHAPTER 542

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CHAPTER 542

INVESTMENT AND FINANCIAL ANALYSTS ACT

[Date of assent: 11th August, 2015.]

[Date of commencement: 8th December, 2015.]

An Act of Parliament to provide for the establishment, powers and functions of the Institute of Certified Investment and Financial Analysts; to provide for the examination and registration of certified investment and financial analysts, and for connected purposes

[Act No. 13 of 2015, Act No. 20 of 2020.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Investment and Financial Analysts Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“annual licence” means an annual licence issued pursuant to section 24;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Capital Markets Authority” means the Authority established under section 5 of the Capital Markets Act (Cap. 485A);

“Chairperson” means the Chairperson of the Institute, and includes a person appointed under paragraph 2 of the First Schedule to act as Chairperson;

“Council” means the Council of the Institute established under section 9;

“Disciplinary Committee” means the Committee established under section 27;

“Examinations Board” means the Kenya Accountants and Secretaries National Examinations Board established under section 14 of the Accountants Act (Cap. 531);

“firm” means a sole proprietorship or partnership or a registered company established by members in practice;

“Institute” means the Institute of Certified Investment and Financial Analysts established by section 3;

“practising certificate” means a practising certificate issued pursuant to section 23;

“Register” means the register kept pursuant to section 18;

“Registration Committee” means the Registration Committee established under section 13 of this Act; and

“securities exchange” means a market, exchange, securities organization or other place at which securities and investments are offered for sale, purchase or exchange, including any clearing, settlement or transfer services connected therewith.

(2) For the purpose of this Act—

- (a) a person is registered if his name is recorded in the register pursuant to section 18 of this Act;
- (b) a person is not registered if he does not seek registration or if his registration is cancelled and particulars of the cancellation are recorded in the register pursuant to section 19 of this Act; and
- (c) a person is registered if the fact of the restoration of his registration is recorded in the pursuant to section 18(1)(d) of this Act.

PART II – ESTABLISHMENT OF THE INSTITUTE

3. Establishment of the Institute

(1) There is established an Institute to be known as the Institute of Certified Investment and Financial Analysts.

(2) The Institute shall be a body corporate with perpetual succession and a common seal, and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of both movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts;
- (e) doing or performing all such other acts necessary for the proper performance of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The provisions of the First Schedule shall have effect with respect to the Institute.

4. Membership of the Institute

(1) Each person who is registered under section 16 of this Act as a member of the Institute shall be allowed to place the prefix the term "FA" before the person's name.

(2) The members of the Institute shall be divided into the following classes, namely—

- (a) Fellows, comprising members who become Fellows pursuant to an invitation under subsection (3) each of whom shall be titled "Fellow of the Institute of Certified Investment and Financial Analyst" (designatory letters "FCIFA");
- (b) Full members (comprising those members registered under section 20 but who are not Fellows) each of whom shall be titled "Member of the Institute of Certified Investment and Financial Analyst" (designatory letters "CIFA").
- (c) Associate members, comprising persons eligible to be registered under section 20 but who do not meet all the requirements prescribed under subsection (1) of that section, each of whom shall be titled "Associate Member of the Institute of Certified Investment and Financial Analyst" (designatory letters "ACIFA").

(3) Where the Council considers that a member of the Institute has fulfilled the requirements for admission into Fellowship as the Council may prescribe, the Council may invite such member to become a Fellow of the Institute.

(4) Associate members shall be entitled to such rights of membership as the Cabinet Secretary may, in consultation with the Council, by notice in the *Gazette* prescribe.

5. Funds of the Institute

(1) The expenditure of Institute and its bodies established under this Act shall be met from the funds generated by the Institute and its bodies under this Act.

(2) The members of the Institute as specified in section 4 shall pay such fees and subscriptions as the Council may from time to time prescribe.

6. Honorary Fellows

(1) Where the Council considers that a person, not being a member of the Institute has rendered special services to the Institute or the investment and financial analysts profession, the Council may invite such a person to become an Honorary Fellow of the Institute.

(2) An Honorary Fellow shall not be a member of the Institute.

(3) An Honorary Fellow shall be titled "Honorary Fellow of the Institute of Certified Investment and Financial Analyst" (designatory letters "Hon FCIFA").

7. Chairperson of the Institute

(1) There shall be a Chairperson of the Institute who shall be elected in the manner provided for in the First Schedule.

(2) A member seeking election as Chairperson shall be a person who—

- (a) has been a member of the Institute for a continuous period of not less than three years;
- (b) has served on the Council or its committees for at least one year; and
- (c) has not been disqualified under the provisions of the Second Schedule.

8. Functions of the Institute

The functions of the Institute shall be to—

- (a) promote standards of professional competence and ethical practice amongst members of the Institute;
- (b) promote research into the subjects of securities and investments and related matters, and the publication of books, periodicals, journals and articles in connection therewith;
- (c) promote the international recognition of the Institute;
- (d) advise the regulator for the time being responsible for capital markets in respect of licensing investment and financial analysts;
- (e) advise the Examinations Board on matters relating to examinations standards and policies;
- (f) to design and administer an initial ethics and integrity test for the purposes of determining the professional suitability of all its members and to subsequently design and undertake such continuous development programmes for its members;
- (g) carry out any other functions prescribed for it under any of the other provisions of this Act or any other written law.

9. The Council

(1) The Institute shall be governed by a Council to be known as the Council of the Institute.

(2) Subject to this Act, all acts and things done in the name of or on behalf of the Institute by the Council, or with the authority of the Council shall be deemed to have been done by the Institute.

(3) The Council shall issue standards of professional practice, including securities and investment standards, which shall form the basis of securities and investment practice for members of the Institute in the preparation, verification and analysis of financial statements.

(4) The Council may, with the approval of the members, issue by-laws to govern matters affecting the operations.

10. Committee of the Council

(1) The Council may establish such committees as necessary for the performance of the functions of the Institute and may, subject to the provisions of this Act, delegate powers conferred on it to such committees.

(2) The provisions of the Second Schedule shall have effect with respect to the Council.

11. Membership of the Council

The Council shall consist of eleven members as follows—

- (a) a Chairperson elected in accordance with section 7;
- (b) one member to represent the ministry responsible for matters relating to finance;
- (c) one member to represent the regulator for the time being responsible for capital markets;
- (d) one member to represent the Examinations Board;
- (e) one member appointed by the Council to represent Securities Exchanges; and
- (f) six members elected in the manner provided in the Second Schedule.

12. Secretary to the Council

(1) There shall be a Secretary to the Council who shall be appointed by the Council.

(2) The Secretary shall be the chief executive officer of the Institute.

(3) The Secretary to the Council shall hold and vacate the office of Secretary in accordance with the terms of the instrument of appointment to that office.

(4) In addition to the functions conferred by or under this Act, the Secretary to the Council shall exercise and perform such other functions as the Council may, from time to time, determine.

13. Registration Committee

(1) There is established a committee to known as the Registration Committee.

(2) The Registration Committee shall consist of eight members to be appointed by the Council as follow—

- (a) a Chairperson appointed from the Institute;
- (b) one person to represent the Ministry responsible for finance;

- (c) one person nominated by the Examinations Board;
- (d) one person to represent the securities exchanges;
- (e) one person nominated by the Capital Markets Authority;
- (f) two persons nominated by the Council to represent the Institute; and
- (g) one person, not being a member of the Institute, nominated by the Council to represent the users of services provided by securities and investments analysts.

(3) The functions of the Registration Committee shall be to—

- (a) receive, consider and approve applications for registration as a certified investment and financial analyst;
- (b) grant practising certificates and annual licenses in accordance with the provisions of this Act;
- (c) monitor compliance with professional, quality assurance and other standards published by the Council for observance by the members of the Institute;
- (d) prescribe regulations to govern quality assurance programmes, including actions necessary to rectify deviations from established standards;
- (e) where appropriate and based on the results of a quality assurance review, recommend to the Council that a member's conduct be referred for inquiry under section 28;
- (f) advise the Council on matters pertaining to professional and other standards necessary for the achievement of quality assurance;
- (g) cancel certificates in accordance with section 19.

(4) In the performance of its functions under this section, the Registration Committee may undertake such investigations as it deems appropriate, and may requisition evidence, examine records and documents prepared or held by, or likely to be available to, the member under investigation.

(5) Where the Registration Committee makes a recommendation under subsection (3)(e) the Council shall refer the matter for inquiry under section 28.

(6) The Disciplinary Committee shall consider as evidence the results of the investigation undertaken by the Registration Committee in an inquiry referred to it under subsection (5).

(7) The Council shall provide the Registration Committee with such facilities and resources as are necessary to enable it competently discharge its functions.

(8) In the exercise of its functions under this Act, the Registration Committee shall regulate its own procedure and shall not work under the direction of any person or persons.

(9) The Secretary to the Council shall serve as the Secretary to the Registration Committee and may, with the consent of the person presiding at a meeting, take part in the deliberations on any matter arising at the meeting but shall not be entitled to vote on any such matter.

(10) The provisions of the Third Schedule shall have effect with respect to the Registration Committee.

PART III – REGISTRATION AND PRACTICE

14. Application for registration

(1) A person wishing to be registered as an investment and financial analyst shall apply to the Registration Committee.

(2) An application to be registered as an investment and financial analyst shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) Where an application is made by a person in accordance with this section, the Registration Committee shall approve the application if it is satisfied that the person—

- (a) is of or above the age fixed by the Council pursuant to subsection (4);
- (b) is qualified to be registered; and
- (c) is not disqualified from being registered, and, if not satisfied shall refuse the application.

(4) The Council shall by notice in the *Gazette*, fix the age which a person wishing to be registered must have attained.

(5) A person who, in an application to be registered, wilfully makes a false or misleading statement commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a period not exceeding eighteen months or to both.

15. Holders of authority to practise

(1) Notwithstanding sections 14(1) and (3), the Registration Committee may, on application and payment of the prescribed fees, register as an investment and financial analyst any person who, prior to the commencement of this Act, is the holder of a valid authority to practise issued in accordance with the provisions of any other Act.

(2) Applications under this section shall be received by the Committee within a period of eighteen months after the commencement of the Act.

16. Qualifications for registration

(1) Subject to this section, a person is qualified to be registered if the person—

- (a) has been awarded by the Examinations Board, a certificate or other documentary evidence confirming that he has passed the final certified investment and financial analysts examination; or
- (b) holds a qualification approved before the commencement of this Act and was registered at the time of commencement of the Act under subsection (2);
- (c) has satisfied the requirements of Chapter Six of the Constitution.

(2) The Council may, in consultation with the Examinations Board from time to time, by notice in the *Gazette*, approve qualifications which it considers sufficient to allow a person to be registered, and may, in like manner, withdraw any such approval.

(3) Notwithstanding subsection (1) or (2), the Council may require a person making an application for registration to satisfy the Registration Committee, in such manner as it may direct, that the person has—

- (a) adequate knowledge of Kenyan laws, including taxation law and law governing financial markets and;

- (b) adequate experience in investment and financial analysis, and
- (c) acceptable professional conduct and general character which in the opinion of the Committee make such person a fit and proper person to be registered and unless the person so satisfies the Registration Committee he shall not be treated as being qualified to be registered.

17. Disqualification from registration

- (1) Subject to this section, a person is disqualified from being registered—
 - (a) if such person is convicted by a court of competent jurisdiction in Kenya or elsewhere of an offence involving fraud or dishonesty;
 - (b) if such person is an undischarged bankrupt;
 - (c) if such person is of unsound mind and has been certified to be so by a medical practitioner;
 - (d) if such person does not meet the requirements of Chapter Six of the Constitution;
 - (e) if such person sits and fails the annual ethics and integrity test administered by the Institute; or
 - (f) during any period when Disciplinary Committee has determined under section 29 that such person shall not be registered or during any such period as varied by the High Court under section 30(2) of this Act.
- (2) A person shall not be treated as disqualified under subsection (1)(a) of this section if the Registration Committee having regard to—
 - (a) the period which has elapsed since the conviction concerned; or
 - (b) the circumstances of the offence, determines that it would be unreasonable to so treat the person.
- (3) A person shall not be treated as disqualified under subsection (1)(b) of this section if the Registration Committee is satisfied that the bankruptcy of the person concerned arose as a result of unavoidable losses or misfortunes.
- (4) A person shall not be treated as being disqualified under subsection (1)(f) of this section if the High Court allows an appeal under section 30 of this Act.

18. Register

- (1) The Secretary to the Registration Committee shall cause to be kept a register in which shall be recorded—
 - (a) the name of any person whose application under section 22 of this Act is approved;
 - (b) the fact that a practising certificate is issued to any person or that any such certificate has ceased to be in force under this Act;
 - (c) the particulars of the cancellation of the registration of any person;
 - (d) the fact that the registration of any person is restored under this Act;
 - (e) details of firms engaged in the practice of investment (including securities) and financial, including their proprietors; and
 - (f) such other matters as the Council may determine.
- (2) The Secretary to the Registration Committee may cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein are accurate.

(3) The register may, at all reasonable hours, be inspected, and copies of all or any part of any entry in the register taken—

(a) without payment, by—

(i) any member of the police force or any servant, acting in the course of his duty; or

(ii) any person authorized by the Secretary Council; or

(b) on payment of such fee as may be prescribed, by any other person.

(4) The register shall be received in proceedings before any court or tribunal as evidence of the matters recorded therein which are required by or under this Act to be so recorded.

(5) A document purporting to be certified by the Secretary to the Council—

(a) to be a true copy of an entry in the register;

(b) stating that a person is not, or was not on a date specified in the document, registered; or

(c) stating that a person is not, or was not on a date specified in the document, the holder of a practising certificate,

shall be received in proceedings before a court or tribunal as *prima facie* evidence of any such matters contained in the entry or of that fact, as the case may be.

(6) Proceedings on an inquiry under this Act before the Disciplinary Committee shall be deemed to be proceedings before a tribunal for the purposes of this section.

[Act No. 20 of 2020, Sch]

19. Cancellation of registration

(1) Subject to this section, the Registration Committee shall cancel the registration of a member—

(a) if determination that the registration of the member be cancelled is made under section 29(1)(i) of this Act;

(b) if any circumstance arises which, if the member were then a person applying for registration, would disqualify him under section 24 from being registered; or

(c) if it is appropriate under subsection (4) of this section to do so.

(2) The Registration Committee shall not cancel the registration of a member under subsection (1)(b) unless it has afforded to the member an opportunity to show cause why his registration should not be cancelled.

(3) Subsections (2) and (3) of section 23 shall apply in relation to the cancellation of the registration of a member of the Institute under subsection (1)(b) of this section as they apply for the purpose of determining whether or not a person is disqualified from being registered.

(4) The Registration Committee may cancel the registration of a member of the Institute who fails to comply with the requirements of section 5.

(5) When the registration of a member of the Institute is cancelled under subsection (1)(a), the Registration Committee shall restore the registration if, on an appeal made under section 30(1) the High Court allows the appeal.

(6) The Registration Committee shall upon request restore the registration of a person whose registration is cancelled under subsection (1)(c).

(7) The registration of a member shall be restored by recording in the register particulars of the restoration.

(8) A person shall not be treated as being disqualified under this section if the High Court allows an appeal under section 30(1) of this Act.

(9) A person aggrieved by a determination of the Registration Committee under section 20(1), section 23(1) and section 24(2) may appeal to an arbitrator against such determination within twenty-one days of being notified of the determination.

(10) A person dissatisfied by a decision under subsection (9) may appeal to the High Court, which may affirm the determination of the Registration Committee or allow the appeal.

20. Authority to practise

(1) No person shall practise as a certified investment and financial analyst unless the person is registered as a certified investment and financial analyst and holds a practising certificate or an annual licence from the Registration Committee that is in force.

(1A) A person shall not become a Chief Investment Officer, or head of an investment department or function in a firm investing public funds, or a firm in the practice of investment and financial analysis, unless the person is registered as a certified investment and financial analyst and holds a practising certificate and an annual licence issued by the Registration Committee.

(1B) A person shall not perform verification, certification and advice of investment of funds in public entity, or a firm in the practice of investment and financial analysis, unless the person is registered as a certified investment and financial analyst and holds a practising certificate and an annual licence issued by the Registration Committee.

(1C) A person shall not verify investment returns declared by a firm investing public funds, or a firm in the practice of investment and financial analysis, unless the person is registered as a certified investment and financial analyst and holds a practising certificate and an annual licence issued by the Registration Committee.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand or to imprisonment for a period not exceeding two years or to both.

[Act No. 20 of 2020, Sch.]

21. Definition of practice

(1) Subject to this section, a person practices as an investment and financial analyst for the purpose of this Act if, in consideration of remuneration or other benefits received or to be received and whether by himself or in partnership with any other person, such person—

- (a) engages in the practice of investment and financial analysis or holds himself out to the public as a person entitled to do so;
- (b) offers to perform or performs services involving investment advice or financial decisions, investment transactions, books, accounts or records;
- (c) offers to perform or performs services involving the verification or certification of investments and related advice; or
- (d) engages in any practice, or performs or offers to perform any services, which may be prescribed.

(2) A salaried employee of the Government or of any other person does not practice as an investment and financial analyst by reason only of doing, in his capacity as such employee, any of the acts referred to in subsection (1).

(3) An advocate, a professional secretary, a professional accountant or a person authorised to do so by or under any written law, may only undertake the work of an investment consultant or investment advisor or a financial consultant in the course of practising their profession.

22. Application for practising certificate

(1) A person wishing to obtain a practising certificate shall apply to the Registration Committee.

(2) An application for a practising certificate shall be in the prescribed form and shall be accompanied by the prescribed fee.

23. Issuance of practising certificate

(1) Where an application is made by a person in accordance with section 22(1), the Registration Committee shall issue to such person a practising certificate if it is satisfied that the person—

- (a) is registered;
- (b) has received, from an investment analyst who is the holder of a practising certificate, instruction of such nature and for such period as may be prescribed; and
- (c) meets such other requirements as may be prescribed, and if not so satisfied, shall refuse the application.

(2) A practising certificate issued under this Act remains in force unless it ceases to be in force under subsection (5), (6) or (7).

(3) Notwithstanding subsection (2), a practising certificate issued to any person shall cease to be in force if that person ceases to be registered.

(4) Where a practising certificate issued to any person ceases to be in force under subsection (5) that practising certificate shall not come into force again if the person is subsequently registered but shall come into force again if the registration of the person is restored.

(5) Subject to subsection (6), a practising certificate shall cease to be in force during any period when it is suspended pursuant to section 29(1)(i) or if that period is varied on appeal under section 30(1) during the period as so varied.

(6) A person may surrender to the Institute, a practising certificate issued to him and, in that event, the certificate shall cease to be in force.

(7) Where a practising certificate ceases to be in force under subsection (3), the person to whom the certificate was issued shall deliver it to the Institute within fourteen days after the date on which he ceases to be registered.

(8) Any person who, without reasonable excuse, contravenes subsection (7) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings for every month accruing or part thereof.

24. Issue of annual license

(1) Where the holder of a practising certificate intends to practice as a firm, whether as a sole practitioner or in a partnership, he shall apply to the Registration Committee for an annual practising license in the prescribed form, furnishing the Registration Committee with such details of the firm as it may require.

(2) Where an application is made by a person under subsection (1), the Registration Committee shall issue him with an annual licence if it is satisfied that the person—

- (a) holds a practising certificate; and
- (b) meets such other requirements as may be prescribed; and, if not so satisfied, shall refuse the application.

(3) An annual licence issued under this Act shall be valid from the date of issue to the thirtieth June of the year of issue and shall be renewed at the end thereof.

25. Property of the Institute

A practising certificate or an annual licence issued to any person shall remain the property of the Institute.

PART IV – DISCIPLINARY PROVISIONS

26. Professional misconduct

(1) A member of the Institute shall be guilty of professional misconduct if such member—

- (a) allows any person to practise in his name as a investment and financial analyst, unless such person is the holder of a practising certificate and is in partnership with or employed by him;
- (b) enters, for the purpose of or in the course of practising as an investment or financial analyst, into partnership with a person who does not hold a practising certificate, or secures any professional business through the services of such a person or by means not open to an investment analyst;
- (c) pays or allows or agrees to pay, directly or indirectly, to any person (other than a person who holds a practising certificate, is a retired partner or the legal representative of such a partner), any share, commission or brokerage out of the fees for, or profits of his professional services;
- (d) accepts or agrees to accept any part of the fees of, or profits for, the professional work of an advocate, auctioneer, broker or other agent who is not the holder of a practising certificate;
- (e) solicits clients or professional work or advertises professional attainments or services by use of means which contravene the guidelines published by the Council;
- (f) discloses information acquired in the course of professional engagement to any person other than a client, without the consent of the client, or otherwise than required by law;
- (g) certifies or submits in his name or in the name of his firm a report of investment advice, where the examination of such statements and the related records have not been made by him or a partner or an employee in his firm;
- (h) fails to observe and apply professional, technical, ethical or other standards prescribed by the Council as guidelines for practice by members of the Institute;
- (i) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a

manner which may lead to the belief that he vouches for the accuracy of the forecasts;

- (j) expresses his opinion on investment statements of any business or any enterprise in which he, his immediate family, his firm or any partner in his firm, has an interest, unless he discloses that interest when expressing the opinion;
- (k) charges, in respect of any professional employment other than insolvency or receivership, fees which are based on a percentage of profits or which are contingent on results;
- (l) fails to disclose in an investment advice statement or otherwise a material fact known to him the disclosure of which is necessary to ensure that the investment advice statement is not misleading;
- (m) fails to report a material misstatement known to him to appear in an investment statement with which he is concerned in a professional capacity;
- (n) is guilty of gross negligence in the conduct of his professional duties;
- (o) expresses an opinion on any matter with which he is concerned in a professional capacity without obtaining sufficient information on which to base the opinion;
- (p) is an employee of an institution whose license is granted under the Capital Markets Act or any applicable law in Kenya and fails to keep the funds of a client in a separate account or fails to use such funds for purposes for which they are intended;
- (q) includes in any statement, return or form to be submitted to the Council any particular knowing it to be false; or
- (r) is found to engage in any other fraudulent acts; or
- (s) fails to do any other act which may be prescribed.

(2) Subsection (1)(f) shall not apply in respect of information disclosed to the Institute in fulfillment of the requirements of a quality assurance programme provided for under section 13.

(3) For the purposes of subsection (1)(j), the term "immediate family" includes a spouse, child, grandchild, parent, grandparent, brother, sister, uncle, aunt, first cousin or adopted child and the child of his or her brother or sister or of his or her adopted child, and such relations of the half-blood, or such child of such relations of the half-blood, as well as of the whole-blood.

27. Disciplinary Committee

(1) There shall be a committee of the Council to be known as the Disciplinary Committee.

(2) The Disciplinary Committee shall consist of eight members who shall be appointed in accordance with subsection (3).

(3) The members of the Disciplinary Committee shall be appointed by the Council from amongst persons nominated in the following manner—

- (a) three members of the Institute, of whom one, who meets the minimum qualifications of a full member of the Institute in good standing with at least ten years' experience in the profession, shall be designated as the Chairperson, one (identified by agreement of the members of the Board or by lot) shall cease to hold office at the commencement of the

day on which the second annual general meeting of the Institute is to be held, save in the case of any such who earlier ceases to hold office;

- (b) one nominated by the Council from another profession other than Securities and Investment Analysts;
- (c) one nominated by the Attorney-General;
- (d) one nominated by the Institute of Certified Public Secretaries of Kenya;
- (e) one nominated by the Capital Markets Authority;
- (f) one nominated by the Cabinet Secretary in charge of the National Treasury.

(4) In making appointments under this section, the Council shall have regard to the knowledge and interest of the persons so appointed in matters pertaining to securities and investment analysis.

(5) The quorum of a meeting of the Disciplinary Committee shall be four members.

(6) Subject to subsection (7), a member of the Disciplinary Committee shall hold office for three years and shall be eligible for reappointment for one further term.

(7) Where any member of the Disciplinary Committee resigns his office or is for any reason unable to perform the functions of his office, the Council shall require the respective nominating body specified in subsection (3) to nominate a replacement for such member, for appointment in accordance with that subsection.

(8) The Council shall provide the Disciplinary Committee with such facilities and resources as are necessary to enable it competently discharge its functions.

(9) The Disciplinary Committee may, subject to the provisions of this Act, regulate its own procedure.

28. Inquiry by the Disciplinary Committee

(1) Where the Council has reason to believe that a member of the Institute may have been guilty of professional misconduct it shall refer the matter to the Disciplinary Committee which shall inquire into the matter.

(2) The provisions of the Fourth Schedule shall have effect with respect to an inquiry by the Disciplinary Committee pursuant to subsection (1).

29. Recommendations after inquiry

(1) On the completion of an inquiry under section 28 into the alleged professional misconduct of a member of the Institute, the Disciplinary Committee shall submit to the Council a report of the inquiry which shall include one or more of the following recommendations, namely that—

- (a) no further action be taken against the member;
- (b) the member be reprimanded;
- (c) the member be reprimanded with publication of the reprimand in the Kenya *Gazette* or in any other suitable media which may include the newspapers, electronic media and the internet;
- (d) the member pays such costs to the Institute, not exceeding five hundred thousand shillings, as may be determined;
- (e) the member undertakes training at his own cost of such nature and duration and at such institutions as may be determined;

- (f) the member pays to the Institute a fine not exceeding one million shillings;
- (g) the member discharges his professional obligations under any contractual arrangement subject of the alleged misconduct;
- (h) any practising certificate held by the member be suspended; or
- (i) the registration of the member be cancelled and that he be not registered for such period (including life) as may be specified.

(2) Where the Disciplinary Committee, in a report makes a recommendation under subsection (1), the Council shall inform the member concerned of the action to be taken against him and effect the recommendation of the Disciplinary Committee.

(3) A member aggrieved by a determination of the Disciplinary Committee under subsection (1) may make an appeal to the Council within sixty days of the communication to him of such determination, providing the grounds upon which the appeal is lodged.

(4) The Council may upon receipt of an appeal under subsection (3) direct the Disciplinary Committee to re-open the inquiry and shall in such direction specify the aspects of the matter it requires the Disciplinary Committee to reconsider.

(5) The Disciplinary Committee shall comply with the direction of the Council under subsection (4) and shall, after concluding the inquiry, submit a report to the Council in accordance with subsection (1).

(6) Any recommendation of the Disciplinary Committee under this section shall not be effected until after the expiry of the period prescribed under subsection (3) for appeals and the subsequent conclusion of the appeal proceedings thereof.

30. Appeal

(1) A person aggrieved by a determination of the Disciplinary Committee under section 29(1) may appeal to the High Court against such determination within sixty days of being notified of the determination.

(2) On an appeal the High Court may affirm, with or without variation, of the period for which the person concerned is not to be registered, or the period for which his practising certificate is suspended, confirm the determination of the Disciplinary Committee or allow the appeal.

(3) A determination under section 29 of this Act shall have effect notwithstanding that an appeal is made against the determination, but in the event that the High Court allows the appeal—

- (a) section 29 of this Act shall have effect in relation to the cancellation of the registration of the member; and
- (b) the suspension of the practising certificate of the member of the Institute shall cease to have effect.

31. Part to apply to previous holder of an authority to practise

For the avoidance of doubt it is declared that the provisions of this Part shall apply to any person registered as an investment and financial analyst under the provisions of section 21(1) of this Act for actions undertaken by such person while practising under a written authority to practise granted prior to the commencement of this Act.

PART V – FINANCIAL PROVISIONS

32. Funds of the Institute

The funds of the Institute shall consist of—

- (a) such fees, monies or assets as may accrue to or vest in the Institute in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
- (aa) money appropriated by the National Assembly.
- (b) such gifts as may be given to the Institute; and
- (c) all monies from any other source provided for or donated to the Institute.

[Act No. 20 of 2020, Sch.]

33. Financial year

Unless otherwise provided, the financial year of the Institute shall be the period for twelve months ending on the thirty-first day of December in each year.

34. Annual estimates

(1) At least three months before the commencement of each financial year, the Institute shall cause to be prepared estimates of revenue and expenditure for that year.

(2) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate.

(3) The Council shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Institute.

(4) Within a period of four months from the end of each financial year, the Council shall submit to its auditors the accounts of the Institute for audit.

(4A) The accounts of the Institute relating to monies appropriated by the National Assembly shall be audited in accordance with the Public Audit Act (Cap. 412B).

(5) Within six months before the end of the financial year, the Council shall lay the audited accounts before the annual general meeting of its members together with any reports made by the auditors.

[Act No. 20 of 2020, Sch]

PART VI – MISCELLANEOUS

35. Staff of the Institute and the Registration Committee

(1) The Institute and the Registration Committee may each engage and employ such persons as are necessary for the discharge of their respective functions under this Act, on such terms and conditions as may be specified in the instruments of appointment.

(2) The terms and conditions of employment of staff employed under this section shall be as may be determined by the Institute and the Registration Committee respectively.

(3) For the purposes of subsection (2) "terms and conditions" includes conditions with respect to the duration of employment or with respect to dismissal from employment.

36. Offences

(1) A person who—

- (a) assumes or uses the title or designatory letters referred to in section 4(1) and who is not a qualified member of the Institute of Certified Investment and Financial Analysts; or
- (b) assumes or uses the title or designatory letters referred to in section 4(2)(a) and who is not a Fellow of the Institute of Certified Investment and Financial Analysts; or
- (c) assumes or uses the title or designatory letters referred to in section 4(2)(b) and who is not a member of the Institute of Certified Investment and Financial Analysts;
- (d) assumes or uses the title or designatory letters referred to in section 4(2)(c) and who is not a member of the Institute of Certified Investment and Financial Analysts;
- (e) assumes or uses the title "Honorary Fellow of the Institute of Certified Investment and Financial Analysts" and who is not such Honorary Fellow; or
- (f) otherwise falsely assumes or uses any title or designatory letters prescribed by the Cabinet Secretary,

commits an offence.

(2) A corporate body (whether incorporated in Kenya or elsewhere) which falsely uses any of the titles or designatory letters referred to in section 4(2)(a), (b) or (c) commits an offence.

(3) Where a firm uses the title or designatory letters referred to in section 4(2) while each of the partners in the firm are entitled to use the title or designatory letters, each of the partners of the firm commits an offence.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding five hundred thousand shillings, and, in the case of a continuing offence, a further fine not exceeding one million shillings for each day on which the offence continues.

37. Vacancy in membership

The Council may exercise and perform its functions notwithstanding any vacancy among the members and the validity of any proceedings of the Council shall not be affected by any such vacancy or any defect in the appointment of a member.

38. Appointment of interim managers

(1) Where a member in private practice suffers incapacitation, the Council may appoint a person, in this section referred to as an interim manager, to conduct the professional affairs of that member for a duration not exceeding two years in accordance with the provisions of the Fifth Schedule.

(2) The interim manager appointed under subsection (1) shall be the holder of a practising certificate issued in accordance with the provisions of this Act.

(3) The provisions of the Fifth Schedule shall have effect with respect to an interim manager appointed under this section.

39. Regulations

The Cabinet Secretary may make regulations prescribing anything which is required to be prescribed under the provisions of this Act.

40. Transitional provision

Where, in any written law, any reference is made (in whatsoever terms), or is implied as referring to an investment and financial analyst, such reference or implied reference shall be deemed, subject to the provisions of the Capital Markets Act and *mutatis mutandis*, refer to the holder of a practising certificate, or to the holders of practising certificates, issued pursuant to section 23 of the Act.

FIRST SCHEDULE

[s. 3(3)]

PROVISIONS RELATING TO THE INSTITUTE**1. Chairperson of the Institute**

(1) A person shall be elected to the office of Chairperson at an annual general meeting of the Institute.

(2) Unless he earlier vacates the office, a person elected to the office of Chairperson shall hold the office for one term of two years or until another Chairperson is elected.

(3) A person who holds the office of Chairperson is not eligible for re-election.

(4) A person who holds the office of Chairperson may resign the office by giving written notice to the Council.

2. Acting Chairperson

(1) On the advice of the Council, the Cabinet Secretary may appoint a person to act as Chairperson—

- (a) during a vacancy in the office of Chairperson; or
- (b) during any period when the Chairperson is for any reason unable to exercise and perform, the function of his office.

(2) The Cabinet Secretary may at any time, on the advice of the Council, revoke the appointment of a person to act as Chairperson.

(3) The appointment of a person to act as Chairperson ceases to have effect—

- (a) if made during a vacancy in the office of Chairperson, when the vacancy ends by the election of a Chairperson;
- (b) if the person appointed resigns from office by writing under his hand delivered to the Cabinet Secretary; or
- (c) if the Cabinet Secretary revokes the appointment under subparagraph (2) of this paragraph.

3. Meetings of the Institute

(1) Subject to paragraph 4 of this Schedule, an annual general meeting of the Institute shall be held not later than six months after the end of each year.

(2) A special general meeting of the Institute—

- (a) may be held at any time; and

- (b) be held on a written request made to the Council by giving to every member of the Institute a written notice.
- (3) A meeting of the Institute shall be convened by the Council by giving to every member of the Institute a written notice—
 - (a) stating the place and time of the meeting; and
 - (b) indicating the business which it is proposed to transact at the meeting, which shall include, among other matters, the presentation of the following—
 - (i) a report by the Council covering the past year;
 - (ii) financial statements and the auditor's report thereon;
 - (iii) election of the Chairperson and Council members; and
 - (iv) the appointment of the auditor.
- (4) Notice of a meeting shall be given not less than fourteen days before the date on which it is to be held to each member of the Institute by posting the notice to the address of the member last known to the Institute, or by handing the notice to the member in person.
- (5) The validity of any proceedings of the Institute shall not be affected by any failure to comply with the requirement of subparagraph (2) of this paragraph unless it is proved that the failure to comply in relation to any member was a deliberate failure.

4. Chairperson to preside

- (1) The Chairperson shall preside at all meetings of the Institute at which he is present
- (2) At a meeting of the Chairperson is not present, the preside.
- (3) At a meeting of the Institute at which neither the Chairperson nor the vice-Chairperson are present the members of the Institute present shall elect one of their members to preside.

5. Quorum

- (1) Subject to this paragraph, the quorum at a meeting of the Institute shall be fifty percent of the members.
- (2) Where a general meeting of the Institute is convened—
 - (a) otherwise than pursuant to paragraph 2(b) of this schedule, and a quorum is not present when the meeting proceeds to business, the meeting shall stand adjourned until the same day on the following week, at the same time and place, and if a quorum is not present at or within fifteen minutes after that time, the members present shall constitute a quorum; or
 - (b) pursuant to paragraph 4(b) of this Schedule, and a quorum is not present when the meeting proceeds to business the meeting shall be dissolved.

6. Business

- (1) No business shall be transacted at a meeting of the Institute unless—
 - (a) the business is indicated in the notice of the meeting as business which it is proposed to transact; or
 - (b) in the case of business not so indicated, the meeting decides to transact the business and the person presiding at the meeting agrees to the transaction of the business.

- (2) Minutes of the proceedings at meetings of the Institute shall be kept in such a manner as the Chairperson or in his absence the person presiding at a particular meeting, directs.

7. Powers of person presiding

The person presiding at a meeting of the Institute may—

- (a) adjourn the meeting from time to time and from place to place, with the consent of the meeting;
- (b) limit the number of persons permitted to speak in favour of or against any motion and the time any such person may so speak.

8. Voting

- (1) Questions arising at a meeting shall be determined by a majority of the members of the Institute voting on the question.
- (2) Voting on any question shall be by a show of hands or such other procedure as may be prescribed in by-laws or regulations published under the provisions of this Act.
- (3) Where a ballot is held, voting may be either done personally or by written proxy.
- (4) An instrument appointing a proxy shall be deposited with the Secretary to the Council not less than forty-eight hours before the meeting of the Institute at which it is to be used.
- (5) A proxy to be used in any ballot at any meeting may be used at the meeting or, if the meeting is adjourned, in any ballot when the meeting is resumed after the adjournment but the holding of a proxy shall not be counted towards the quorum at any stage of any meeting.
- (6) The person presiding at a meeting of the Institute has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.
- (7) A declaration by the person presiding at a meeting of the Institute that a resolution has or has not been carried and an entry to that effect in the minutes of the meeting is evidence of that fact.

SECOND SCHEDULE

[ss. 10(2), 11]

PROVISIONS RELATING TO THE COUNCIL

1. Membership of the Council

- (1) Each of the six members of the Council (one of whom shall be the Vice-Chairperson) referred to in section 11(f) of this Act shall be elected at an annual general meeting of the Institute.
- (2) Subject to paragraph 2 of this Schedule, a member of the Council—
 - (a) elected pursuant to subparagraph (1);
 - (b) appointed pursuant to section 11(b), (c), (d) and (e) of this Act; or
 - (c) co-opted pursuant to subparagraph (4),

shall hold office for the prescribed period, unless he earlier ceases to hold office.

- (3) A member of the Institute shall be disqualified from contesting any position on the Council if within the preceding three years, such member—

- (a) has been found guilty of an act of professional misconduct under section 26 of the Act, which in the opinion of the Council renders him unfit to hold the office;
 - (b) has been convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
 - (c) has been convicted of an offence involving corruption, dishonesty or abuse of office; or
 - (d) has been adjudged bankrupt or has entered into a composition or scheme of arrangement with his creditors.
- (4) Subject to subparagraph (5), where a member of the Council (including a member co-opted pursuant to this subparagraph) ceases to hold office before the expiration of the prescribed period or otherwise than under the provisions of paragraph 2 of this Schedule (where applicable), the Council may co-opt a person to hold that office.
- (5) Subparagraph (4) does not apply to the members of the Council appointed pursuant to section 11(b), (c), (d) and (e) of this Act.
- (6) In this subparagraph, the "prescribed period" means—
- (a) in relation to a member referred to in subparagraph (2)(a), the period beginning with his election and ending at the commencement of the day on which the third annual general meeting after his election is to be held;
 - (b) in relation to a member referred to in subparagraph (2)(b), the period of three years next following his appointment; or
 - (c) in relation to a member referred to in subparagraph (2)(c), the period beginning with his being co-opted and ending at the commencement of the day on which the first annual general meeting after his being co-opted is to be held.

2. Transition in membership

Of the six members of the Council (including Vice-Chairperson) first elected by the Institute after commencement of this Act—

- (a) two (identified by agreement of the members of the council or by lot) shall cease to hold office at the commencement of the day on which the second annual general meeting of the Institute is to be held, save in the case of any such who earlier ceases to hold office;
- (b) two (so identified) shall cease to hold office at the commencement of the day on which the third annual general meeting of the Institute is to be held, save in the case of any such member who earlier ceases to hold office; and
- (c) the remaining two members shall cease to hold office at the commencement of the day on which the fourth annual general meeting of the Institute is to be held, save in the case of any such member who earlier ceases to hold office.

3. Vacancy of office

Notwithstanding paragraph 2, the office member of the Council shall become vacant if member—

- (a) resigns the office by writing under his hand delivered-

- (i) in the case of the members appointed pursuant to section 11(b), (c), (d) and (e) to the Cabinet Secretary; or
- (ii) in the case of any other member, to the Council;
- (b) has the appointment revoked by the Cabinet Secretary in the case of the members appointed pursuant to section 11(b), (c), and (e);
- (c) ceases to hold the office in the case of the members appointed pursuant to section 11(b), (c), (d) and (e);
- (d) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (e) is absent without the permission of the Council from three or more consecutive ordinary meetings of the Council;
- (f) is convicted of an offence and sentenced to imprisonment for a term of six month or more without the option of a fine;
- (g) is found guilty of an act of professional misconduct under section 26 of the Act, which in the opinion of the Council renders him unsuitable to continue to hold office; or
- (h) becomes for any reason, including infirmity of body or mind, incompetent or incapable of performing the functions of his office.

4. Filing of vacancy

- (1) Subject to paragraph 1 (4) of this Schedule, where a member of the Council ceases to hold office, another member shall be elected to fill the vacancy at the annual general meeting of the Institute next following, or shall be appointed as provided under section 11(b), (c) or (d) of this Act, as the case may be.
- (2) A member of the Council who ceases to hold office other than under paragraph 3(b), (c) or (d) is eligible for reelection or re-appointment.

5. Vice-Chairperson of the Council

- (1) There shall be a Vice-Chairperson of the Council who shall be elected by the Council from amongst the members of the Council elected under section 11(f) of this Act.
- (2) The Vice-Chairperson shall hold office for the period of one year immediately following his election to the office or, if he ceases to hold office as a member of the Council before then, until he so ceases to hold office.
- (3) Subject to paragraph 2 of the First Schedule of this Act, the Vice-Chairperson may exercise and perform the functions of the Chairperson if the Chairperson is unable to exercise and perform those functions.

6. Proceedings

The quorum at meetings of the Council and the arrangements relating to meetings of the Council shall be such as the Council may determine.

7. Casting vote

The person presiding at a meeting of the Council has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

8. Minutes

Minutes of the proceedings of the Council shall be kept in such manner as the Council directs, and, on the written request of the Cabinet Secretary, shall be made available to him or any person nominated by him.

THIRD SCHEDULE

[s. 13(10)]

PROVISIONS RELATING TO THE REGISTRATION COMMITTEE

1. Term of office

- (1) A member of the Registration Committee shall hold office for a period of three years unless he earlier ceases to hold office.
- (2) A member of the Registration Committee may resign the office by writing under his hand to the Council which shall seek the nomination of a replacement for appointment by the Cabinet Secretary.
- (3) A member of the Registration Committee who ceases to hold office at the end of the prescribed term is eligible for re-appointment.

2. Procedure for quality assurance review

- (1) The procedure to be followed on a quality assurance review shall subject to this Schedule, be at the discretion of the Registration Committee
- (2) The Registration Committee shall notify the member of an impending quality assurance review at least twenty-one days prior to commencement of the review.

3. Results of quality assurance review

- (1) Where the results of a quality assurance review are considered unsatisfactory, the Registration Committee may require the member or members concerned to undertake necessary corrective actions to comply with professional standards and may prescribe requirements to be observed in this respect.
- (2) The requirements of the Registration Committee shall be implemented by the member or members investigated within such time as may be determined.

4. Report to the Council

The Registration Committee shall provide the Council with a report on all the quality assurance reviews the Committee undertakes and where necessary or appropriate, the Council shall take such action as may be recommended therein.

5. Disclosure of information

- (1) The Registration Committee shall not without the consent of the member or members under review, disclose to any person other than the Council, any information received in the course of an investigation, unless such disclosure is required by a law for the time being in force in Kenya.
- (2) Any member of the Registration Committee or quality assurance review team who discloses any information acquired in the course of a quality assurance review contrary to the provisions of this Act or applies such information to gain advantage whether financial or otherwise commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings.

6. Quorum

The quorum for meetings of the Registration Committee shall be four.

7. Voting

The decision of the Registration Committee shall be that of the majority of the members present and voting but in the event of equality of votes, the Chairperson shall have a casting vote.

8. Validity of proceedings

The validity of the proceedings of the Registration Committee shall not be invalidated by any vacancy in its membership.

9. Record keeping

A record of the proceedings of the Registration Committee shall be kept in such manner as the Committee directs, and may on a written request be availed to the Council or a party authorized by the Council or the High Court to receive them.

FOURTH SCHEDULE

[s. 28(2)]

**PROVISIONS RELATING TO THE DISCIPLINARY
COMMITTEE PROCEEDINGS ON INQUIRY****1. Statement of allegations**

- (1) The Council shall cause a statement to be prepared setting out the allegation of professional misconduct to be investigated by the Disciplinary Committee.
- (2) The Secretary to the Council shall transmit to each member of the Disciplinary Committee and to the person whose conduct is the subject of investigation a copy of the statement prepared pursuant to subparagraph (1) of this paragraph.

2. Notice of inquiry

- (1) The Secretary to the Council shall give notice of the first date, time and place fixed for the inquiry to the person whose conduct is the subject of investigation.
- (2) Every such notice shall, at least fourteen days before the first date fixed for the inquiry, be delivered to the person whose conduct is the subject of investigation by hand or be sent to him through the post by registered letter addressed to his address last known to the Council.
- (3) Where a person whose conduct is the subject of investigation fails to appear either personally or by his advocate at the time and place fixed in the notice served on him, the inquiry may proceed in his absence.
- (4) Notice of the adjournment of an inquiry shall be given to the person whose conduct is the subject of investigation in such manner as the Disciplinary Committee determines.

3. Representation by advocate

- (1) A person whose conduct is the subject of investigation may appear at the inquiry by an advocate.

- (2) The Institute may appear at the inquiry by an advocate.

4. Powers of Disciplinary Board

- (1) For the purpose of the conduct of the inquiry the Disciplinary Committee has power—
- (a) to administer oaths;
 - (b) to summon person to attend and give evidence;
 - (c) to order the production of relevant documents including court judgements; and
 - (d) to recover in whole or in part the costs of the inquiry not exceeding one hundred thousand shillings from any or all the parties involved in the proceedings.
- (2) An oath may be administered by any member of the Disciplinary Committee or by the Secretary to the Council.
- (3) Notices, orders and summonses of the Disciplinary Committee shall be issued under the hand of the Secretary to the Council.

5. Procedure for inquiry

- (1) Subject to this Schedule on the inquiry—
- (a) the procedure to be followed is within the discretion of the Disciplinary Committee; and
 - (b) the Disciplinary Committee is not bound by the rules of evidence.
- (2) Unless the Disciplinary Committee otherwise determines, the proceedings on the inquiry shall be held in camera.
- (3) The Secretary to the Council shall keep or cause to be kept, a record of the proceedings on the inquiry.
- (4) The Secretary to the Council may attend meetings of the Disciplinary Committee and may with the consent of the person presiding at the meeting take part in the deliberations on any matter arising at the meeting but he shall not be entitled to vote on any such matter.

6. Voting

- (1) The decision of the Disciplinary Committee on the inquiry is that of the majority of the members present and voting for the purpose of making a decision.
- (2) For the purposes of making the decision on the inquiry every member of the Disciplinary Committee has one vote, and, in the event of an equality of votes, the Chairperson of the Disciplinary Committee also has a casting vote.

7. Validity of proceedings

The validity of proceedings of the inquiry is not affected by any vacancy among the members of the Disciplinary Committee or any defect in the appointment of a member.

8. Offences

- (1) A person served with a summons to appear as a witness at the inquiry who, without reasonable excuse fails to attend as required by the summons, is guilty of an offence.
- (2) A person appearing as a witness at the inquiry who, without reasonable excuse—

- (a) refuses or fails to be sworn;
 - (b) refuses or fails to answer a question that he is required to answer by the Chairperson of the Disciplinary Committee; or
 - (c) refuses or fails to produce a document that he was required to produce by a summons under this Act, served on him, commits an offence.
- (3) A person convicted of an offence under this subparagraph is liable on conviction to a fine not exceeding twenty thousand shillings.

9. Immunity

- (1) A member of the Disciplinary Committee has, in the performance of his duty as a member, the same protection and immunity as a judge.
- (2) A person appearing before the Disciplinary Committee at the inquiry on behalf of the person whose conduct is the subject of investigation has the same protection and immunity as an advocate has in appearing for a party in proceedings in the High Court.
- (3) A person summoned to attend or appearing before the Disciplinary Committee as a witness at the inquiry has the same protection, and is, in addition to the penalties provided in this Schedule, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the High Court.

10. Judicial proceedings

Proceedings on the inquiry shall be deemed to be judicial proceedings for the purposes of Chapter XI of the Penal Code (Cap. 63).

FIFTH SCHEDULE

[s. 38]

PROVISIONS RELATING TO INTERIM MANAGER**1. Incapacitation of member**

A member in practice shall be deemed to be incapacitated when an event occurs that makes it impossible for the member to continue running the practice in accordance with the provisions of this Act or a circumstance arises which makes it not possible for the member to continue discharging the duties expected of him as a professional certified investment and financial analyst.

2. Nomination of interim manager

Every member who holds a practising certificate shall at such intervals as the Council may direct nominate a suitably qualified member in good standing to be known as the interim manager, to manage and control the affairs of his practice in the event of incapacity or inability of the member to run the affairs of the practice.

3. Failure to nominate

Where a member in practice fails to nominate an interim manager as required under this Schedule, the Council may exercise its powers as conferred in section 38 of the Act.

4. Obligation of interim manager

- (1) For the purpose of nominating the interim manager, a member in practice or the Council as the case may be shall specify in the instrument of nomination —
 - (a) the general nature of obligations to be assumed by the interim manager, and specifically the role of the interim manager in the disposal of the practice and his relationship with any person who may be appointed as estate executor or administrator;
 - (b) the powers of the interim manager covering matters such as staff deployment or other operations of the practice;
 - (c) the remuneration of the interim manager;
 - (d) the period of service of the interim manager;
 - (e) the powers conferred on the interim manager to sign reports, correspondence, agreements or other documentation in the name of the practice; and
 - (f) the premises from which the operations will continue to take place if different from the practice's registered office.
 - (2) An interim, manager shall take appropriate steps to safeguard the welfare of clients of the practice at the time of assuming office and should desist from conduct that seeks to gain from his appointment, otherwise than in the form, of remuneration agreed.
 - (3) An interim manager shall be responsible for their own actions. The interim manager shall exercise due care and skill in the discharge of his duties and shall provide adequate professional indemnity insurance during the term of his engagement and meet other conditions as may be prescribed.
 - (4) Where appropriate, the interim manager may have his name included in the letter head of the practice but not alter the name of the practice unless this is expressly provided for in the nomination agreement.
 - (5) Where the nominating member has at the time of nominating an interim manager authorized the sale of his practice, the interim manager shall enter into negotiations with interested parties and shall ensure that the instructions of the nominating member are executed to his best interest.
 - (6) Full details of every agreement involving the appointment of an interim manager shall be submitted to the Council within twenty-one days of its commencement and an interim manager shall within seven days of assuming office notify the Council of that fact.
 - (7) Where the Council appoints an interim manager, full details of the appointment shall be recorded by the Council and the acceptance thereof documented.
 - (8) The interim manager shall at intervals of six months, submit a report to the person that appointed him, and where the appointing member is incapacitated or deceased, the interim manager shall submit such report to the Council. The report shall contain all such details as may be prescribed by the Council and any other matters covered within the nomination agreement.
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