



BERMUDA

BERMUDA PUBLIC ACCOUNTABILITY ACT 2011

2011 : 29

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### SCHEDULE

WHEREAS it is expedient for the Government of Bermuda to establish a comprehensive, independent and transparent system of oversight of public accountants that audit Public Interest Entities that are listed and trading securities on any stock exchange in the European Union member states and in other specified jurisdictions;

AND WHEREAS for the effective oversight of public accountants that audit Public Interest Entities it is necessary to establish a statutory corporation with power to carry out independent public supervision by means of developing and implementing quality assurance systems and enforcement systems with adequate processes for investigations and enforcement;

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AND WHEREAS the system of oversight for public accountants that audit Public Interest Entities that the Government seeks to establish is a system that is in accordance with Articles 29, 30 and 32 of Directive 2006/43/EC of the European Parliament and Council;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### PART 1 PRELIMINARY

#### Citation

1 This Act may be cited as the Bermuda Public Accountability Act 2011.

#### Interpretation

- 2 In this Act unless the context otherwise requires—
- “annual audits” means the annual audits conducted pursuant to section 90 of the Companies Act 1981;
  - “Board” means the Board of Directors of the Bermuda Public Accountability Board established under section 4;
  - “the BPAB” means the Bermuda Public Accountability Board established under section 3;
  - “Committee” means the BPAB Compliance Committee appointed by the BPAB under section 30;
  - “ICAB” means the Institute of Chartered Accountants of Bermuda established under the Institute of Chartered Accountants of Bermuda Act 1973;
  - “non-executive member” means a member of the Board of Directors of the Bermuda Public Accountability Board other than the Secretary to the Board;
  - “Minister” means the Minister of Finance;
  - “Public Interest Entity” or “PIE” means an entity that is audited by a PIE public accountant and that is listed and trading securities on any stock exchange in the European Union member states or in such other jurisdiction as the Minister may by Order specify;
  - “PIE public accountant” means a public accountant or audit firm that is registered under section 18 to audit the financial statements of a PIE;
  - “Register” means the Register for PIE Public Accountants maintained as provided in section 21;
  - “Regulations” means Regulations made by the Minister as provided under section 38;

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“rules” means rules made by the BPAB as provided under section 37;

“Secretary to the Board” means the Secretary to the Board appointed under section 8;

“violation event” means—

- (a) an act or practice, or omission to act, in violation of this Act, the Regulations or generally accepted auditing standards pursuant to section 90(3) of the Companies Act 1981 that may have an effect on the provision of audit services;
- (b) a failure to cooperate with the terms of an order for inspection or investigation; or
- (c) a failure to comply with the terms of any requirement, restriction or penalty imposed by the Committee.

### PART 2

#### ESTABLISHMENT OF BERMUDA PUBLIC ACCOUNTABILITY BOARD

##### Establishment of BPAB

3 (1) There is established a body corporate to be known as the Bermuda Public Accountability Board (the BPAB).

(2) The BPAB has perpetual succession and a common seal, and may sue and be sued in its name.

(3) Subject to the provisions of this Act, the BPAB shall be operationally independent.

*[Section 3 effective 11 July 2012 by BR 51 / 2012 para. 2]*

##### Composition of Board

4 (1) There shall be a Board of Directors of the BPAB appointed by the Minister and comprised of the following persons—

- (a) a chairman;
- (b) a minimum of two and a maximum of four other non-executive members;  
and
- (c) the Secretary to the Board.

(2) The Minister shall appoint the chairman and other non-executive members of the Board for such terms not exceeding three years as may be specified in their respective letters of appointment.

(3) In appointing the non-executive members of the Board, the Minister shall appoint persons who in the Minister’s opinion have broad experience and expertise in law, the auditing profession, financial services or financial regulation.

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(4) The chairman and non-executive members of the Board shall be paid such salaries, fees and allowances as the Minister may determine.

(5) The Schedule shall have effect as to terms of appointment, meetings and procedures of the BPAB.

*[Section 4 effective 11 July 2012 by BR 51 / 2012 para. 2]*

### Functions of BPAB

- 5 (1) The functions of the BPAB are—
- (a) to register and authorize public accountants that conduct annual audits of PIEs;
  - (b) to advise the Government on matters relating to the oversight and registration of public accountants for the purposes of this Act;
  - (c) to establish and administer a repository of documents and information relating to PIE public accountants, and to determine how access by the public to such documents and information is to be provided;
  - (d) to keep and maintain—
    - (i) a Register of PIE Public Accountants;
    - (ii) such other registers as may be necessary for the purposes of this Act;
  - (e) to prescribe and review the requirements to be satisfied by persons or firms seeking to be registered as PIE public accountants for the purposes of this Act;
  - (f) to determine, prescribe, review and adopt—
    - (i) the codes of professional conduct and ethics for PIE public accountants; and
    - (ii) the standards, methods and procedures to be applied by PIE public accountants when auditing PIEs;
  - (g) inquire and, if necessary, institute review proceedings in accordance with section 33 with respect to—
    - (i) any complaint against any PIE public accountant; or
    - (ii) any information relating to any professional misconduct on the part of any PIE public accountant;
  - (h) to delegate to any local or international agency or entity, of good repute, any aspect of its functions under this Act;
  - (i) to advise the Minister on any matter which relates to annual audits of PIEs by PIE public accountants; and
  - (j) generally do all such acts, matters and things as are necessary to be carried out under this Act.

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(2) For purposes of subsection (1), the BPAB may adopt the pronouncements on professional matters and ethics of any other professional accountancy body.

*[Section 5 effective 11 July 2012 by BR 51 / 2012 para. 2]*

### Powers of BPAB

6 (1) Subject to subsection (3) and the other provisions of this Act, the BPAB shall have power to do anything for the purpose of discharging its functions under this Act or any other written law, or which is incidental or conducive to the discharge of those functions.

(2) Without prejudice to the generality of subsection (1) but subject to this Act, the powers of the BPAB shall include the power to—

- (a) enter into such contracts as may be necessary or expedient for the purpose of discharging its functions;
- (b) establish and administer such systems or arrangements as it may consider necessary or expedient for the discharge of its functions;
- (c) prescribe, regulate or implement rules, measures and standards on any matter relating to or connected with its functions;
- (d) engage in any activity, either alone or in conjunction with any other organization or agency, whether local or international, that is connected with or that is conducive to the discharge of its functions;
- (e) levy such charges or fees as may be reasonable for services and facilities provided by the BPAB;
- (f) levy financial penalties with respect to contraventions and violations of requirements under this Act and any Regulations or rules made under this Act;
- (g) receive grants, subsidies and contributions from any source and raise funds by all lawful means; and
- (h) do such other acts as are incidental or necessary to any of its functions and powers.

(3) The BPAB may, for the purposes of the execution of its functions and powers under this Act, upon serving a notice in writing, obtain or demand information from a PIE public accountant or any person or entity who is in possession of such information.

(4) The power under subsection (3) to require a PIE public accountant or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that the PIE public accountant or person, or any other person who is partner or former partner of, or is or was at any time employed by or acting as an employee of, the PIE public accountant in question, to provide an explanation of any of them; and

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- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section is guilty of an offence and liable on summary conviction to a fine of not exceeding \$10,000 or to imprisonment for a term of 12 months or to both.

(6) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

*[Section 6 effective 11 July 2012 by BR 51 / 2012 para. 2]*

Appointment of committees and delegation of powers

7 (1) The BPAB may, in its discretion, appoint from among its own members or from among other persons such number of committees as it thinks fit for purposes which, in the opinion of the Board, would be more expediently carried out or managed by such committees.

(2) The BPAB may, subject to such conditions or restrictions as it thinks fit, delegate—

- (a) to any of its members;
- (b) to its Secretary to the Board or any of its officers or employees;
- (c) to any committee appointed by it under subsection (1); or
- (d) to any other person as the BPAB thinks fit,

any of the functions or powers of the BPAB under this Act except the power of delegation conferred by this section and the power to make rules under this Act.

(3) Any function or power delegated under subsection (2) to any person or committee may be performed or exercised by that person or committee in the name and on behalf of the Board.

*[Section 7 effective 11 July 2012 by BR 51 / 2012 para. 2]*

Staff of BPAB

8 (1) The Minister shall appoint a Secretary to the Board on such terms and conditions as the Minister may determine.

(2) The Secretary to the Board shall be responsible to the Board for the proper administration and management of the functions and affairs of the Board in accordance with the policy laid down by the Board.

(3) The Minister may appoint any other person to act in the place of the Secretary to the Board whenever the Secretary to the Board is unable to perform his duties for any period because of absence from Bermuda, illness or any other reason.

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(4) The Minister may, from time to time, on the recommendation of the BPAB, appoint and employ, on such terms and conditions as the Minister may determine, such other officers, employees, consultants and agents as may be necessary for the effective performance of functions of the BPAB.

*[Section 8 effective 11 July 2012 by BR 51 / 2012 para. 2]*

### Immunity from suit

9 (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against an officer, servant or agent of the BPAB, or any member of the Board, or the Minister, in respect of any act done bona fide in pursuance or execution or intended execution of their functions under this Act or any other Act and regulations made thereunder.

(2) Where any member of the Board is exempt from liability by reason only of subsection (1), the BPAB shall be liable to the extent that it would be if that member were a servant or agent of the BPAB.

(3) Neither the BPAB nor any person who is, or is acting as, the Secretary to the Board or an officer, servant or agent of the BPAB, or a member of the Board, or the Minister, is liable in damages for anything done or omitted to be done in the discharge or purported discharge of the BPAB's functions under this Act or any other Act and Regulations made thereunder, unless it is shown that the person acted, or omitted to act, in bad faith.

*[Section 9 effective 11 July 2012 by BR 51 / 2012 para. 2]*

## PART 3

### FINANCIAL PROVISIONS

#### Funds of Board

- 10 (1) The funds of the BPAB shall consist of—
- (a) all fees and financial penalties;
  - (b) all moneys received by the BPAB by way of charges and fees for services rendered by the BPAB to any person;
  - (c) all moneys, dividends, royalties, interest or income received from any source or transaction made pursuant to the powers conferred on the BPAB under this Act;
  - (d) all moneys borrowed by the BPAB for the purposes of this Act;
  - (e) all grants, subsidies and contributions paid to the BPAB or received from any source and funds raised by all lawful means; and
  - (f) all such sums as may be appropriated by the Legislature for the purposes of the BPAB, where the funds of the BPAB received as provided in this section, less expenses incurred, result in a deficit in any financial year.



(2) The funds of the BPAB shall be applied only in payment of expenses incurred by it in the discharge of its functions, obligations and liabilities and in making any payment that it is authorized or required to make.

(3) The Minister may make regulations for the purposes of—

- (a) the budget of the BPAB;
- (b) the fees for the registration of PIE public accountants, that shall form part of the budget of the BPAB;
- (c) the powers of the BPAB to—
  - (i) levy financial penalties with respect to any matter for which a financial penalty may be levied under the Act;
  - (ii) charge for any service rendered by the BPAB; and
- (d) any other matter relating to the budget of the BPAB.

(4) The financial penalties to be levied with respect to subsection 3(c)(i) shall not exceed \$10,000.

(5) Regulations made under subsection (3) shall be subject to the negative resolution procedure.

#### Financial year

11 The financial year of the BPAB shall end on 31 March in each year.

#### Estimates and expenditure

12 (1) The BPAB shall, not later than three months (or such shorter period as the Minister may allow) before the commencement of each financial year, submit to the Minister for the Minister's approval estimates in such form and in such detail as the Minister may require in respect of the BPAB's budget and expenditure on operations in that financial year.

(2) The BPAB shall, as soon as practicable, submit to the Minister for the Minister's approval any proposed amendments to the estimates.

(3) The estimates and any amendments to the estimates, approved by the Minister for any financial year, shall constitute the BPAB's expenditure budget for that financial year.

(4) The BPAB shall not, without the Minister's approval, exceed the total amount of expenditure approved by the Minister for that financial year.

(5) The Minister may lay down in writing guidelines to be observed by the BPAB in the management of its expenditure budget, and the BPAB shall comply with any such guidelines.

(6) Where a specific sum is provided in the BPAB's expenditure budget for any financial year in respect of any expenditure item, the BPAB shall not spend on that item in that financial year any amount in excess of that sum unless the excess expenditure—

- (a) is made within the Ministerial guidelines; or
- (b) has been approved by the Minister.

Accounts of BPAB

13 (1) The BPAB shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in such form as required by applicable accounting standards.

(2) The statement of accounts must present fairly and accurately—

- (a) the financial transactions of the BPAB during the financial year to which they relate; and
- (b) the financial position of the BPAB at the end of the financial year.

(3) The BPAB shall within six months after the end of its financial year cause to be submitted to the Auditor General, the statement of its accounts.

(4) Upon completion of the audit, the Auditor General shall present the audited statements to the Board.

Annual report

14 As soon as practicable after the end of each financial year the BPAB must issue an annual report on the exercise of its functions during that year.

Publication of annual report and accounts

15 (1) The BPAB shall, as soon as practicable after the end of each financial year, cause to be made and transmitted to the Minister—

- (a) a copy of the annual report of the operations of the BPAB during that year; and
- (b) a copy of the audited annual statement of accounts of the BPAB certified by the Auditor General.

(2) The Minister shall as soon as practicable after receipt of the report and annual statement of accounts cause a copy to be laid before both Houses of the Legislature.

PART 4

REGISTRATION OF PUBLIC ACCOUNTANTS AUDITING PUBLIC INTEREST ENTITIES

Auditing PIEs without registration prohibited

16 (1) No person or firm may conduct annual audits of the financial statements of a PIE unless such person or firm—

- (a) is a public accountant, or in the case of a firm its partners are public accountants, pursuant to the definition of the term “public accountant”

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under section (2) of the Institute of Chartered Accountants of Bermuda Act 1973; and

- (b) is registered as a PIE public accountant under this Part, to audit the financial statements of a PIE.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months, or to both.

### Application for registration as a PIE public accountant

17 (1) A person or firm (the applicant) may apply to the BPAB to be registered to audit the financial statements of PIEs in such form or manner as the BPAB may in the rules prescribe.

(2) An application under subsection (1) shall be accompanied by—

- (a) a fee of \$5,000;
- (b) a declaration by the applicant verifying any information contained in or relating to the application; and
- (c) such other information or documents that the BPAB may require.

(3) The BPAB may require an applicant to undergo such interviews as the BPAB may determine.

(4) The BPAB may refuse to register any applicant for registration under subsection (1)—

- (a) that in the opinion of the BPAB is engaged in any business or occupation that is inconsistent with the integrity of a public accountant; or
- (b) if any of the applicant or employees or partners of the applicant has had a registration, licence or approval to practice as a public accountant in any other country withdrawn, suspended, cancelled or revoked.

(5) Where the BPAB refuses to register an applicant, it shall by notice in writing inform the applicant of its refusal.

(6) Any person or firm that is aggrieved by any refusal of the BPAB under subsection (4) may, within 30 days of the notice given under subsection (5), appeal to the Minister.

### Registration of a PIE public accountant

18 (1) Subject to subsection (2), where the BPAB is satisfied that an applicant for registration under section 17 has met the requirements under that section for registration, the BPAB shall—

- (a) register the applicant as a PIE public accountant and record the applicant's name and relevant particulars in the Register for PIE Public Accountants; and

(b) issue to the applicant a certificate of registration in such form or manner as may be prescribed in the rules.

(2) A certificate of registration issued under subsection (1) may be issued on such conditions and impose such restrictions on the registered PIE public accountant as the BPAB may determine.

(3) Subject to the provisions of this Act, a certificate of registration issued under subsection (1) shall be for a period of 12 months and shall take effect as from the date of its issue or renewal.

#### Renewal and expiry of registration

19 (1) A person or firm registered as a PIE public accountant shall, not less than one month before the date of the expiry of the registration, submit an application for the renewal of registration to the BPAB in such form or manner as may be prescribed in the rules.

(2) An application under subsection (1) shall be accompanied by—

- (a) a fee of \$5,000; and
- (b) a declaration by the applicant verifying any information contained in or relating to the application.

(3) Unless the BPAB determines otherwise, a PIE public accountant shall not be entitled to have the certificate of registration renewed if such PIE public accountant has failed—

- (a) to comply with—
  - (i) the prescribed requirements under this Act, Regulations and rules;
  - (ii) the conditions set out in the certificate of registration; or
- (b) to satisfy such other requirements, not contrary to the objectives of this Act, as the BPAB may require.

#### Report of change in particulars

20 (1) A PIE public accountant shall notify the BPAB of changes in the name or any particulars of the PIE public accountant as recorded in the Register within 30 days of such change, in such manner, as may be prescribed in the rules.

(2) Any person or firm that fails, without reasonable excuse, to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction, by a court of summary jurisdiction, to a fine not exceeding \$1,000.

#### Register of PIE Public Accountants

21 (1) The BPAB shall maintain the Register of PIE Public Accountants as a public register into which persons or firms registered as PIE public accountants, under section 18 (1), are registered.

(2) The BPAB shall, during office hours, permit any person to—

- (a) inspect the Register at no charge;
  - (b) obtain copies of the Register at a charge to be determined by the BPAB.
- (3) The Minister may, in the Regulations, provide for—
- (a) the structure and organization of the Register;
  - (b) the particulars and other data of a PIE public accountant to be provided in the Register; and
  - (c) such other matters regarding the Register that are for the better carrying out of the provisions of this Act.

Removal from Register

22 (1) The BPAB shall remove from the Register the name and relevant particulars of any PIE public accountant—

- (a) who has applied to the BPAB to cancel the registration of such PIE public accountant and such application has been granted by the BPAB;
- (b) if it is proved that the PIE public accountant—
  - (i) submitted incorrect or incomplete details when submitting the application or renewal of application, which details would have resulted in such PIE public accountant not qualifying for registration; or
  - (ii) obtained the registration as a PIE public accountant by fraud or misrepresentation;
- (c) if the public accountant is adjudged bankrupt or has made any arrangement with creditors;
- (d) that has ceased to be entitled to practice as a public accountant under the Institute of Chartered Accountants of Bermuda Act 1973;
- (e) where, without reasonable excuse, such PIE public accountant has failed to renew the certificate of registration under this Act after one month from the date of the expiry thereof;
- (f) who, being an individual, has died;
- (g) who, being an individual, has become unfit to practise as a public accountant by reason of any physical or mental condition.

(2) The BPAB shall, before exercising its powers under subsection (1)(b) or (c), notify the PIE public accountant concerned of its intention to take such action and shall give such PIE public accountant an opportunity to submit reasons, within such period as the BPAB may determine, as to why the PIE public accountant's registration should not be cancelled.

- (3) The BPAB shall not—
- (a) grant an application by a PIE public accountant to cancel the registration referred to in subsection (1) (a); or

- (b) remove the name and relevant particulars of a PIE public accountant from the Register under subsection (1) (b) or (c),

if the BPAB has received any complaint or information against any such PIE public accountant under Part 6, or if review proceedings under that Part are pending against such PIE public accountant.

(4) Subject to subsection (3), any person or firm whose name has been removed from the Register under subsection (1) (e) may, if such person or firm desires to be reinstated in the Register, apply to the BPAB for reinstatement within 21 days of being informed by the BPAB of the removal of the name from the Register, and the BPAB shall, upon payment of the prescribed fee, reinstate the such person or firm to the Register.

#### Fraudulent practices in relation to registration

23 (1) No person or firm shall—

- (a) procure or attempt to procure registration as a PIE public accountant under this Act by knowingly making or producing or causing to be made or produced any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise;
- (b) wilfully make or cause to be made any falsification in the Register of PIE Public Accountants;
- (c) forge, alter or counterfeit any certificate of registration as a PIE public accountant issued under this Act;
- (d) use any forged, altered or counterfeit certificate of registration as a PIE public accountant under this Act knowing the certificate to have been forged, altered or counterfeited; or
- (e) personate or falsely represent a PIE public accountant or buy, sell or fraudulently obtain a certificate of registration as a PIE public accountant issued under this Act.

(2) Any person or firm that contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months, or to both.

### PART 5

#### REQUIREMENTS FOR PIE PUBLIC ACCOUNTANTS

##### PIE public accountant to discharge duty with integrity

24 (1) A PIE public accountant shall, as a condition of registration, observe at all times the pronouncements and rules on all professional matters and ethics issued by the BPAB, including pronouncements and rules in respect of the following—

- (a) competence, independence, objectivity and integrity in the discharge of professional duty;

(b) technical and ethical standards of the profession.

(2) For the purpose of subsection (1), the BPAB may adopt the pronouncements on professional matters and ethics of any other professional accountancy body.

(3) A PIE public accountant who fails to comply with subsection (1) shall be subject to review proceedings under Part 6.

#### Quality control systems

25 (1) The business of a PIE public accountant, so far as it relates to annual audits of PIEs, shall be under the control and management of persons who are public accountants having knowledge in regards to the quality control systems for accounting and auditing that are used by the business.

(2) A PIE public accountant shall design, maintain and comply with a system of quality control in accordance with the pronouncements and rules on all professional matters and ethics issued by the BPAB, including pronouncements and rules in respect of the following—

- (a) the organizational structure of the business;
- (b) the policies adopted by the business; and
- (c) procedures established to ensure that the business is conforming with professional standards.

(3) Regulations may prescribe further requirements with respect to the quality control systems to be designed by PIE public accountants.

(4) A PIE public accountant who fails to comply with this section and the Regulations made under subsection (3) shall be subject to review proceedings under Part 6.

#### PIE public accountant to maintain confidentiality

26 (1) Subject to subsection (2), a PIE public accountant shall, during the performance of an annual audit, maintain the confidentiality of all information which such PIE public accountant knows to be or can reasonably assume to be of a confidential nature.

(2) Confidential information obtained by a PIE public accountant during the performance of an annual audit shall be disclosed by the PIE public accountant only in pursuance of the provisions of this Act or of any other law.

(3) A PIE public accountant who fails to comply with subsection (1) shall be subject to review proceedings under Part 6.

#### Business operations of PIE public accountant

27 (1) A PIE public accountant shall ensure that the business operations relating to the business of the PIE public accountant are managed in accordance with the—

- (a) rules on professional conduct of the ICAB with respect to the highest standards of accountability, transparency, fairness and responsibility; and

(b) pronouncements and rules on all professional matters and ethics issued by the BPAB with respect to standards referred to in paragraph (a).

(2) A PIE public accountant shall ensure—

(a) in accordance with rules on professional conduct of the ICAB, the independence of the partners and employees of such PIE public accountant performing annual audits; and

(b) compliance with pronouncements and rules on all professional matters and ethics issued by the BPAB with respect to independence in the performance of annual audits,

so as to protect the integrity of the audits performed.

(3) The rules made by the BPAB under subsections (1)(b) or (2)(b) may be in addition to, or may substitute, any of the rules on professional conduct of the ICAB referred to in subsections (1)(a) or (2)(a)

(4) Rules may prescribe the required standards to be observed by a PIE public accountant with respect to—

(a) the conduct and control of business operations;

(b) the control of risk;

(c) the avoidance of business conflict; and

(d) any other matter relating to the business operations of a PIE public accountant.

(5) For the purposes of subsection (4), the BPAB may adopt the pronouncements on professional matters and ethics of any other professional accountancy body.

(6) Without prejudice to the provisions of any other law with respect to contraventions under this section, a PIE public accountant who fails to comply with the provisions of this section shall be subject to review proceedings under Part 6.

#### Prohibited audits of PIEs

28 (1) A PIE public accountant shall not perform an annual audit for a PIE if, with respect to that PIE, the PIE public accountant has—

(a) compiled the financial accounts on which the annual audit is based at any time during the previous two years;

(b) been responsible for setting up, or actually set up, a substantial part of the financial administration during the period to which—

(i) the financial accounts refer and on which the annual audit is to be based; or

(ii) the annual audits will be carried out.

(2) The BPAB may in the rules provide for any other matter required for the purposes of subsection (1).



(3) A PIE public accountant who fails to comply with the provisions of this section and the rules made under subsection (2) shall be subject to review proceedings under Part 6.

PART 6

SUPERVISION AND ENFORCEMENT

Conditions applicable to BPAB

29 (1) No more than one Director of the BPAB may participate in determining the day-to-day policies in regard to the supervision of compliance with this Act if such Director—

- (a) has been responsible for conducting of annual audits at any time in the period three years prior to their appointment to the BPAB;
- (b) was solely or jointly responsible for the day-to-day management of a PIE public accountant at any time in the three years prior to their appointment to the BPAB;
- (c) was a voting member of a board of a PIE public accountant or an audit firm at any time in the three years prior to their appointment to the BPAB;
- (d) was employed or affiliated to a PIE public accountant during any time in the three years prior to their appointment to the BPAB.

(2) If the BPAB acts in contravention of subsection (1) the Minister may—

- (a) revoke any decision made by the BPAB during the period of contravention;
- (b) remove from office any Director who wilfully contravened subsection (1).

(3) Nothing done under subsection (2) shall prejudice the right of court action against any Director under this Act or any other law.

Appointment of BPAB Compliance Committee

30 (1) The BPAB shall appoint a committee, to be known as the BPAB Compliance Committee, to supervise compliance with the provisions of this Act and the Regulations and rules made under to this Act by PIE public accountants registered under this Act.

(2) The Committee shall consist of—

- (a) any one or more Directors of the BPAB, from whom shall be appointed the Chairman of the Committee;
- (b) such number of public accountants and lay persons as the BPAB thinks fit; and
- (c) a member of any local or international agency or entity, of good repute.

(3) A member of the Committee shall be appointed for a term of two years and shall be eligible for reappointment.

(4) The BPAB may at any time remove from office any member of the Committee or fill any vacancy in its membership.

(5) The Committee shall determine its own procedure.

Right of Committee to information

31 (1) A PIE public accountant shall make available to the BPAB or the Committee, when requested, personal information concerning the partners and employees of the PIE public accountant to the extent relevant to such partners' or employees' professional activities, including information on—

- (a) educational records;
- (b) employment records;
- (c) compensation records;
- (d) performance records.

(2) A partner or employee of a PIE public accountant shall deliver to the Committee, if requested by it, complete copies of any reports, evaluations and similar materials provided to such partner or employee by any professional regulatory authority, subject to such deletions as may be required in order to comply with restrictions at law or pursuant to applicable professional conduct rules.

(3) The BPAB or the Committee may collect information on a PIE public accountant or the partners or employees of such PIE public accountant—

- (a) connected with the conduct of an investigation under this Act of the PIE public accountant;
- (b) from local and international regulatory authorities to the extent included in reports, evaluations, recommendations and similar materials created or received by such authorities for the purposes of inspections of the PIE public accountant, or the partners or employees of such PIE public accountant.

(4) The BPAB or the Committee may use information obtained under subsection (2) when assessing the degree of compliance of the PIE public accountant, or the partners or employees of such PIE public accountant with—

- (a) provisions of this Act and Regulations;
- (b) professional standards or rules; or
- (c) the PIE public accountant's own quality control policies,

for the purpose of issuing audit reports on the financial statements of PIEs and any other purpose as may be provided under this Act or in any law.

(5) The Committee may disclose the personal information it has obtained under this section to—

- (a) any professional regulatory authority having jurisdiction over the PIE public accountant or the partners or employees of the PIE public accountant in connection with such authority's statutory duties;
  - (b) a PIE public accountant in connection with the Committee conducting any inspections, investigations or review proceedings concerning, or imposing where appropriate, requirements, restrictions or penalties on the PIE public accountant;
  - (c) local or international securities regulators and any local or international agency that the BPAB has an arrangement with, provided that disclosure shall not be made of any specific information relating to the business, affairs or financial conditions of any client of the PIE public accountant; and
  - (d) any other authority as may be required by law.
- (6) The provisions of section 6(3) shall apply, with the necessary modifications, to the disclose the personal information under subsection (5).

#### Inspections and investigations

32 (1) Every PIE public accountant shall be subject to regular inspections, or where applicable investigations, as the Committee may from time to time conduct, either directly or through or in cooperation with any professional agency or authority, in order to assess the compliance of each PIE public accountant with the provisions of this Act and Regulations, the professional standards and rules, and the quality control policies of the PIE public accountant, in connection with the issuance of audit reports on the financial statement of PIEs.

(2) Without limiting the generality of subsection (1), the Committee shall ensure that each PIE public accountant is made subject to an inspection, or where applicable an investigation, at least once in every three year period.

(3) The Committee may issue an order for investigation if it considers that a violation event may have occurred and may designate any one or more members of the Committee to conduct the investigation.

(4) If as a consequence of an inspection or investigation, or otherwise, the Committee considers that a violation event has occurred, the Committee may give notice to a PIE public accountant or any partners or employees of such PIE public accountant that it proposes to impose review proceedings, in accordance with such conditions as may be prescribed in the rules.

(5) The BPAB may in the rules prescribe—

- (a) the manner in which every PIE public accountant and any partners and employees of such PIE public accountant, shall cooperate with the Committee in the performance of an inspection;
- (b) for the provision of access to, and the ability to copy, any document in the possession, custody or control of a PIE public accountant, and any

partners and employees of such PIE public accountant, subject to the limitations set out in section 6(6);

- (c) for the provision of information by oral interview, written response or other means;
- (d) the action to be taken and the procedure to be followed following the release of the inspection report setting out weaknesses, deficiencies or recommendations with regard to a PIE public accountant; or
- (e) the procedure for the publication of weaknesses, deficiencies or recommendations contained in the inspection report.

#### Review Proceedings

33 (1) The Committee shall issue an order for review proceedings against a PIE public accountant—

- (a) where the Committee deems it necessary based on—
  - (i) reports resulting from any inspections or investigations conducted under the Act; or
  - (ii) any provision of the Act that requires that in the case of non-compliance with the provision, review proceedings be conducted;
- (b) upon the receipt of a petition for review proceedings from—
  - (i) a public accountant that is an applicant to be registered under this Act;
  - (ii) a PIE public accountant;
  - (iii) a partner or employee of the PIE public accountant against whom review proceedings are issued, hereinafter referred to as the petitioning party.

(2) In any review proceeding, the parties shall be—

- (a) the Committee;
- (b) any PIE public accountant that is the subject of the review proceeding; and
- (c) where applicable, the petitioning party.

(3) The Committee may determine the issues to be considered in review proceedings.

#### Constitution and proceedings of review panel

34 (1) A review panel shall consist of four members, who shall be appointed by the BPAB from any professional agency or entity, of good repute, situated locally or internationally.

(2) The BPAB shall designate one member of the review panel to be its chairman.

(3) A review panel may be appointed in connection with one or more matters or for a fixed period of time, as the BPAB thinks fit.

(4) The BPAB may at any time remove the chairman or any member of a review panel or fill any vacancy in a review panel.

(5) No act done by or under the authority of a review panel shall be invalid in consequence of any defect that is subsequently discovered in the appointment or qualification of the chairman or members or any of them.

(6) The Minister may in Regulations prescribe—

- (a) the proceedings of the review panel;
- (b) the process for levying financial penalties with respect to contraventions and violations of requirements; and
- (c) any other matter required for the purposes of the review panel.

(7) The financial penalties to be levied with respect to subsection 6(b) shall not exceed \$10,000.

(8) Regulations made by the Minister under subsection (6) shall be subject to the negative resolution procedure.

## PART 7

### MISCELLANEOUS

#### Restrictions on employing disqualified persons

35 (1) No PIE public accountant shall in connection with the PIE public accountant's practice as such, without the consent of the BPAB, employ or remunerate, for the purpose of auditing PIEs, any person who to such PIE public accountant's knowledge—

- (a) is an undischarged bankrupt;
- (b) has had his registration as a PIE public accountant suspended or cancelled under Part 6;
- (c) has been convicted of an offence by a court of law and sentenced to imprisonment for a term of not less than 12 months or to a fine of not less than \$5,000.

(2) On application made by any person, the BPAB may make an order directing that as from the date to be specified in the order, no PIE public accountant shall, in connection with the PIE public accountant's practice as such, employ or remunerate, for the purpose of auditing PIEs, any person who is the subject of the application and who—

- (a) has been a party to any act or default of a PIE public accountant in respect of which a complaint has been or might properly have been made against that PIE public accountant under the provisions of this Act; or

- (b) has so conducted himself while employed by a PIE public accountant that, had he himself been a PIE public accountant, his conduct might have formed the subject of a complaint under the provisions of this Act against him.

(3) Every application under subsection (2) shall be served upon the person in respect of whom it is made and upon his employer or previous employer if his employer or previous employer is a PIE public accountant, not less than 10 days before the application is to be heard.

(4) Every order made under subsection (2) shall be filed in a file kept for this purpose by the BPAB and such file may be inspected by any PIE public accountant, without fee.

#### Offences committed by partnerships or incorporated firms

36 (1) Proceedings for an offence under this Act alleged to have been committed by a partnership or an incorporated firm shall be brought in the name of the partnership or incorporated firm and not in that of the partners or members of the firm; but without prejudice to any liability of the partners or members of the firm under subsection (3).

(2) A fine imposed on a partnership or an incorporated firm on its conviction in such proceedings shall be paid out of the partnership's or incorporated firm's assets.

(3) Where a partnership or an incorporated firm is guilty of an offence under this Act, every partner or member, who knowingly committed the offence or permitted or authorized the committal of the offence, shall also be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

#### Rules

37 (1) The BPAB may, with the approval of the Minister, make rules to give effect to this Act.

(2) Without prejudice to the generality of subsection (1), the BPAB may, with the approval of the Minister, make rules to—

- (a) provide for the manner in which applications for registration may be made under this Act;
- (b) prescribe the qualifications and other requirements for the registration of PIE public accountants under this Act;
- (c) provide for the classification of PIE public accountants;
- (d) prescribe the standards, methods, procedures and other requirements to be applied by PIE public accountants when auditing the financial statements of a PIE;
- (e) prescribe the code of professional conduct and ethics of PIE public accountants;
- (f) provide for matters relating to the discipline of PIE public accountants;

- (g) prescribe requirements for continuing education, quality assurance and investigative systems; and
- (h) prescribe anything which may be prescribed in relation to the foregoing matters.

(3) In making rules for the purpose of subsection (2) (d) and (e), the BPAB may adopt any standard, method, procedure or code of professional conduct or ethics issued or applied by any recognized professional accountancy body or organization.

(4) Section 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to rules made by the BPAB under this Act.

#### Regulations

38 (1) The Minister may make Regulations for the purposes of this Act prescribing anything that is necessary or convenient to be prescribed for the carrying out of the provisions of this Act or to give effect to it, or that is required or permitted by this Act to be prescribed.

(2) Regulations made under subsection (1) may create offences and provide that a person who commits an offence against the Regulations is liable on conviction to a fine not exceeding \$5,000.

(3) Regulations and Orders made by the Minister under this Act shall be subject to the negative resolution procedure.

#### Commencement

39 The provisions of this Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for the coming into operation of different provisions.

SCHEDULE

(section 4 )

PART 1

BOARD OF DIRECTORS

*Appointments to Board of Directors of BPAB*

1. The appointment of a person as a non-executive member of the Board shall be for a period not exceeding three years, except that initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.

2. (1) A person appointed as a member in place of a person who ceased to hold office before the end of the term for which he was appointed shall be appointed for the remainder of that person's term of office.

(2) A person holding office as a non-executive member may at any time resign by giving notice in writing to the Minister.

3. The chairman or a non-executive member is eligible for reappointment, except where he is removed from office under paragraph 4.

*Removal from office and disqualification for appointment*

4. The Minister, acting after consultation with the BPAB, may remove a person from office as chairman or non-executive member of the Board—

(a) if he is satisfied that such person—

(i) has without reasonable excuse been absent from three consecutive board meetings of the BPAB;

(ii) has been convicted (whether before or after his appointment) of a criminal offence;

(iii) is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged;

(iv) has made a composition or arrangement with, or granted a trust deed for, his creditors; or

(v) is otherwise unable or unfit to carry out his functions as chairman or non-executive member; or

(b) by giving such person notice of termination of appointment.

5. A person is disqualified for appointment as a non-executive member of the Board if he is a member of either House of the Legislature or a person employed in a government



department in respect of which remuneration is payable out of money provided by Parliament.

6. A person appointed as a non-executive member of the Board shall vacate office if he becomes a person to whom paragraph 5 applies.

7. The fact that a person has held office as a non-executive member of the Board does not disqualify him for reappointment to that office.

8. The Minister shall cause to be published in the Gazette the name of every person appointed as a member of the Board.

*Remuneration of non- executive members*

9. The BPAB shall pay to the chairman and each of the non-executive members such remuneration and allowances as may be approved by the Minister.

PART 2

PROCEDURE FOR MEETINGS OF THE BOARD

*Powers*

10. The Board may act notwithstanding the existence of one or more vacancies in its members or a defect in the appointment of a member.

*Meetings*

11. (1) The Board shall meet as often as necessary or expedient for the due performance of its functions.

(2) The chairman may summon a meeting at any time on giving such notice, as in his judgment, the circumstances may require.

12. At a meeting of the Board, the proceedings shall be regulated as follows—

- (a) a majority of the members of the Board constitute a quorum;
- (b) the chairman shall chair meetings of the Board;
- (c) if the chairman is absent from a meeting of the Board, the members present at the meeting shall nominate one of their number to chair the meeting;
- (d) if a member of the Board has any direct or indirect interest in any dealing or business with the BPAB—
  - (i) he shall disclose his interest to the Board at the time of the dealing or business being negotiated or transacted; and

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- (ii) he shall have no vote in relation to the dealing or business, unless the Board has resolved that the interest does not give rise to a conflict of interest;
- (e) subject to subparagraph (d)(ii), a member of the Board shall have no vote in relation to any question arising which touches or concerns him;
- (f) in the event of an equality of votes, the chairman shall have a casting vote;
- (g) the Board shall determine its own procedure.

[Assent Date: 04 August 2011]

[Operative Date: 16 December 2015]