

**CERTIFIED CREDIT PROFESSIONALS BILL, 2018**

## **CERTIFIED CREDIT PROFESSIONALS BILL, 2018**

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A Bill for

*AN ACT of Parliament to provide for the establishment, powers and functions of the Institute of Certified Credit Professionals of Kenya, to provide for the examination and the registration of certified credit professionals, and for the regulation and development of the credit profession and for connected purposes.*

ENACTED by the Parliament of Kenya, as follows—

## PART I – PRELIMINARY

1. This bill may be cited as the Certified Credit Professionals Bill of 2018.

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

“Credit Practice” means the work of a Credit professional;

“A Credit Professional” means a person with expertise in credit control, credit analysis, credit consulting, debt collection, credit risk management, debt counselling and related functions, achieved through formal education and practical experience, and

(a) demonstrates and maintains competence; and

(b) complies with a code of ethics; and

(c) is held to a high professional standard; and

(d) is a member of the Institute.

(e) is subject to enforcement of the rules and regulations of the Institute.

“Credit technician” means a person with the knowledge of credit practice who has completed a diploma in credit examination or equivalent examination administered by the Examinations Board and registered as such by the Institute”;

“Accreditation” means the confirmation, through certification, that a training institution meets and continues to meet the standards of quality set by the Examinations Board in relation to institutional, administration and governance, trainers, physical and technological resources, financial stability, student’s affairs and services and institutional integrity;

“Appeals committee” means the committee established under the provisions of the Sixth Schedule;

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

“Cancellation of registration” means expulsion of a member from membership of the Institute;

“Student” means a person registered to take an examination conducted by the Examinations Board;

“Chief Executive Officer” means the person appointed and employed as such in accordance with section 15 for the Institute, or the person who is for the time being exercising the functions and powers of a chief executive;

“Certificate” means a document issued by the Examinations Board on completion of an examination or part of an examination;

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

“Disciplinary Committee” means the committee established under section 32;

“Examination” means an examination conducted under this Act by the Examinations Board;

“Examinations Board” means the Kenya Accountants and Secretaries National Examinations Board (kasneb);

“Essential services” means services as described in the Labour Relations Act, 2007;

“Firm” means a sole proprietorship or partnership established by members granted license(s) by the institute;

“Gazette” means the Kenya Gazette;

“Institute” means the Institute of Certified Credit Professionals of Kenya (ICCPK) established under section 3 of this Act;

“Practicing certificate” means an annual practicing certificate issued Pursuant to section 22;

“Member” means a person registered as a member of the Institute in accordance with section 15;

“Public interest entity” means—

(a) Entities holding funds in a fiduciary capacity as determined by Council;

(b) Any entity subject to the supervision, control or rules of—

(i) the Capital Markets Authority of Kenya; or

(ii) the Central Bank of Kenya; or

(iii) the Insurance Regulatory Authority; or

(iv) the Nairobi Securities Exchange; or

(v) the Sacco Societies Regulatory Authority; or

(vi) the Retirement Benefits Authority; and

their successor bodies.

(c) Any entity in respect of which any two of—

(i) the annual revenue;

(ii) the number of employees;

- (iii) the total assets;
- (iv) the total liabilities, not including shareholder equity, as at the end of the most recent accounting year of that entity; exceed the amount or number that the Cabinet Secretary may respectively prescribe from time to time in regulations under this Act;
- (d) any entity receiving and or holding funds in trust or managing public resources;
- (e) Public Benefit Organizations defined by the Public Benefits Organization Act as any entity that provides essential services to the public as published in the gazette notice by the Cabinet Secretary;
- (f) any entity that holds public funds and or any entity that receives public funds.

“Register” means the registers kept pursuant to section 21;

“Registration” means the entry of the name and relevant particulars of a person on his admission as a member of the Institute;

“Registration and Quality Assurance Committee” means the Committee established under section 16;

“Restoration of registration” means readmission of a full member who has been previously expelled;

“Suspension of registration” means suspension of the membership of a member for a certain period;

## **PART II - ESTABLISHMENT OF THE INSTITUTE OF CERTIFIED CREDIT PROFESSIONALS OF KENYA**

### **Establishment, Membership and Functions of the Institute**

3(1) There is established an Institute to be known as the Institute of Certified Credit Professionals of Kenya, (ICCPK).

(2) The Institute shall be a body corporate with perpetual succession, having a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as body corporates may by law perform.

(3) The institute may acquire, hold, develop and dispose of moveable or immovable property and investment in other enterprises.

(4) The institute may borrow, lend or otherwise raise money in such usual manner by way of executing securities and guarantees, as it may from time to time determine.

(5) The institute may enter into legally binding contracts.

(6) The institute may do or perform all such other acts necessary for the proper performance of its functions.

### **Functions of the Institute**

4 (1) The functions of the Institute shall be to—

- a) Develop and regulate the credit practice and management in Kenya;
- b) Promote standards of professional competence and ethical practice amongst members of the Institute;
- c) Promote research into the subjects of credit practice and related matters, and the publication of books, periodicals, journals and articles in connection therewith;
- d) Advise the Cabinet Secretary, on national and county governments on matters relating to Credit Practice and or; in the public interest;
- e) Advise the Examinations Board on standards on Credit Practice examinations;
- f) Issue licenses in the various credit practitioner's disciplines;
- g) Prescribe standards in Credit Practice and related matters which shall be of mandatory national application in Kenya;
- h) Promote global recognition of the Credit profession and the Institute;
- i) Establish and assist in establishing and supporting associations, funds, trusts, and schemes intended to benefit credit professionals;
- j) Do anything incidental or conducive to the performance of any of the preceding functions.

(2) Levy such fees and subscriptions as the Council may so determine;

## **Membership of the Institute**

5(1) The membership of the Institute shall be categorized into the following classes, namely—

- a) Fellows, comprising those full members pursuant to an invitation by Council and upon fulfilling a criteria prescribed by Council shall be designated and titled “Fellow of the Institute of Certified Credit Professionals of Kenya” (designatory letters FCCP);
- b) Honorary members comprising of those members admitted pursuant to Section 6.
- c) Full members (comprising those members registered under section 17 but who are not Fellows) each of whom shall be titled “Member of the Institute of Certified Credit Professionals of Kenya” (designatory letters CCP (K)).
- d) Associate members comprising persons who are qualified in terms of section 19 (1) (a), but who do not meet all the requirements prescribed under subsection (1) of that section 19.
- e) Student members comprising persons who are pursuing the Certified Credit Professionals examination or its equivalent.
- f) Such other classes of members with such designations, titles, and conditions of membership as the Council may by notice prescribe.

5 (2) Associate members and other classes of members established under subsections (d-e) above shall not be entitled to vie or vote for Council members but shall enjoy such rights and be subject to such conditions of membership as the Council shall prescribe.

## **Honorary members**

6. The Council may grant a letter of conferment to any person of irreproachable professional conduct, who, not being a member of the Institute has rendered special service to the credit profession and public service in Kenya and conferring upon him the title and designation of Honorary Member of the Institute of Certified Credit Professionals of Kenya”. Such persons shall remain honorary members at the pleasure of the Council.

## **Institute seal**

7. (1) The seal of the Institute shall be such device as may be determined by the Institute and shall be kept in the custody of the Chief Executive Officer.

(2) The seal shall not be affixed to any document except by the order of the council.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may be entered into or executed without seal on behalf of the Council by the Chairman or any other person generally or specifically authorized by the Council in that behalf.

(4) Any instrument purporting to be executed under the seal of the Institute shall be received in evidence and shall, unless the contrary is proved, be deemed to be an instrument so executed.

#### **Staff of the Institute**

8. The Council may appoint such officers, agents and other staff as are necessary for the proper and efficient discharge of the functions of the Institute and the Council under this Act, upon such terms and conditions of service as the Council may determine.

#### **Experts and consultants**

9. The Council may, on the advice of the Chief Executive Officer, engage on behalf of the Institute, the services of experts and consultants in respect of any of the functions of the Institute in connection with which they are considered to have special competence.

#### **Delegation by the Council**

10. The Council may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council or the Institute under this Act or under any other written law.

#### **Remuneration of the Council members**

11. The members of the Council shall be paid such fees, allowances and disbursements for expenses as may be determined by the Council.

#### **Protection from personal liability**

12. No matter or thing done by a member of the Council or by any officer, member of staff, or agent of the Council shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Council under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action or claim.

#### **B—Council of the Institute**

##### **The Council and Committees of the Institute**

13. (1) The Institute shall be governed by a Council.

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

(3) The Council may, subject to the provisions of this Act, issue by-laws, regulations and guidelines to govern all matters affecting the operations of the Institute and the credit profession.

(4) The Council may establish such committees as are 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.

(5) The Council may perform any other functions incidental or conducive to the performance of any of the preceding functions.

(6) The provisions of the First Schedule shall apply to the Council.

#### **Membership of the Council**

14. (1) The Council shall consist of nine members as follows—

(a) the Chairperson elected by the members in accordance with the provisions of the First Schedule;

(b) the vice Chairperson elected by the members;

(c) three other members, who shall be full members of the Institute, elected in the manner provided in the First Schedule;

(d) one member nominated by the Ministry responsible for matters relating to finance;

(e) one member nominated by the Association of Kenya Credit Providers;

(f) one member to represent the Examinations Board;

(g) one member to be nominated by the Kenya Bankers Association.

(2) In nominating persons to the Council, the nominating authority shall have regard to—

(a) the need to appoint a person who has requisite skills, knowledge and experience in the credit profession;

(b) Chapter 6 of the Constitution and any other provisions of the Constitution;

(c) Article 81 of the Constitution.

#### **Chief Executive Officer of the Institute**

15. (1) There shall be a Chief Executive Officer of the Institute who shall be appointed by Council.

(2) The Chief Executive Officer shall;

- (a) be the secretary to the Council.
  - (b) be the accounting officer of the Institute.
  - (c) be responsible for the direction of the affairs and the exercise, discharge and performance of the objectives, functions and duties and the general administration of the Institute.
- (3) The Chief Executive Officer shall hold office for a term of four (4) years in accordance with the terms specified in the instrument of appointment to that office and shall be eligible for reappointment once, for a further term of four (4) years.
- (4) In addition to the functions which he is required to exercise and perform by or under this Act, the Chief Executive Officer of the Institute shall exercise and perform such other functions as the Council may, from time to time, determine.

#### **Registration Committee**

16. (1) There is established a Registration and Quality Assurance Committee (hereinafter known as the Registration Committee) consisting of Seven members to be appointed by the council as follows;
- 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 nominated by Kenya Institute of Bankers;
  - e) two persons nominated by the council to represent the institute; and
  - f) one person, not being a member of the Institute, nominated by the council to represent credit consumers.
- (2) The functions and powers of the Registration Committee shall be to—
- (a) Receive, consider and decide on applications for admission and for registration as a member of the Institute;
  - (b) Receive, consider and decide on applications for grant of licenses in accordance with the provisions of this Act;
  - (c) Prescribe regulations and rules regarding membership for consideration, approval and issuance by the Council;
  - (d) Prescribe and monitor compliance with regulations to govern quality assurance programmes, including actions necessary to deal with non-compliance with or deviation from published standards, by-laws regulations and guidelines on members, and persons engaged in Credit Practice work;
  - (e) Prescribe the fee guidelines for practicing Credit professionals through regulations;

- (f) Prescribe guidelines on internship and engagement of students by employers;
- (g) Where appropriate and based on the results of a quality assurance review, refer to the Investigative Committee that a member's conduct be referred to the Disciplinary Committee;
- (h) Advise the Council on all matters pertaining to quality assurance; and
- (i) Perform any other functions incidental to the fulfillment of its objectives under this Act.

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

(4) The Disciplinary Committee shall consider as evidence the results of the investigation undertaken by the Registration Committee in an inquiry referred to under subsection (3) of this section.

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

(6) 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.

(7) The Chief Executive Officer or his/her nominee of the Institute shall serve as the Secretary to the Registration Committee, and may take part in the deliberations on any matter arising at the meeting, but shall not be entitled to vote on any such matter.

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

## **C –Institute admission, registration and practicing certificates**

### **Application for membership**

17. (1) There shall be such classes of membership as provided under Section 5 or as the Council may determine in accordance with the rules of the Institute.

(2) Each class of membership shall have such rights, privileges and obligations as may be prescribed in the rules of the Institute.

(3) A person may apply to the Institute for registration as a member in accordance with the provisions of the rules of the Institute.

### **Application for admission and registration**

18. (1) A person wishing to be admitted to the Institute as a member and to be registered as such shall apply to the Registration Committee.

(2) An application under this Section shall be in the form prescribed by the Council from time to time and shall be accompanied by such fees, certificates and other documents as the Council shall from time to time prescribe.

(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 qualified to be registered under section 19.

(b) is not disqualified from being registered, and, if not satisfied, shall refuse the application.

(4) A person aggrieved by a determination of the Registration Committee under this section may appeal to an arbitrator appointed by the Council against such determination by lodging a written notice with the Chief Executive Officer of the Institute within twenty one days of his being notified of the determination.

(5) A person aggrieved by the decision of an arbitrator under subsection (4) may appeal to the High Court.

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

#### **Qualifications for admission and registration**

19. (1) Subject to this section, a person is qualified to be registered under Section 18 if he—

(a) is a holder of Certified Credit Professional (CCP) final examination certificate issued by the Examinations Board; OR

(b) holds any other qualification approved under subsection (2) by the Council in consultation with the Examinations Board; and

(c) has completed such period of structured practical experience as may from time to time be prescribed by the Council; OR

(d) has been granted by the Council a letter of conferment for irreproachable professional conduct where he has rendered exemplary service to the credit profession and public service in Kenya and conferred upon him the title and designation of Honorary Member of the Institute of Certified Credit Professional of Kenya” (designatory letters HICCPK), and such persons shall remain Honorary members at the pleasure of Council

(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), the Registration Committee may require a person making an application for registration for full membership to satisfy in such manner as it may direct, that the person has—

- (a) adequate experience in credit practice including structured practical experience;
- (b) adequate knowledge of local law and practice;
- (c) acceptable professional conduct and general character which, in the opinion of the Committee, makes 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.

#### **Disqualifications from admission and registration**

20. (1) Subject to this section, a person is disqualified from being registered—

- (a) if such person has been 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 has been legally certified as being of unsound mind and that certification remains in force; or
- (d) during any period when the Disciplinary Committee has determined under section 30(1)(j) that such person shall not be registered, or during a period when the Disciplinary Committee has determined under section 30(1) (j) that such person shall not be registered, or during any such period as varied by the High Court under section 38(1) 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 him.

(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) (d) of this section if the High Court allows an appeal under section 35 (1) of this Act.

## Register

21. (1) The Chief Executive Officer shall cause to be kept, a register of members, in which shall be recorded—

- (a) the names and relevant details of all persons registered under Section 18;
- (b) that a member certificate has ceased to be in force under this Act;
- (c) particulars of the suspension of the registration of any person;
- (d) particulars of the cancellation of the registration of any person;
- (e) the fact that the registration of any person is restored under this Act;
- (f) details of any additional certification or authorization granted by the Institute or under other written law;
- (g) details of firms engaged in the public practice of Credit, including their proprietors, with specification of the scope of their work; and
- (h) such other matters as the Council may determine; and, for the purposes of this Act, “relevant details” shall include the business or professional address of the member or his employer and any other information that the Council may from time to time deem appropriate for inclusion in the register.

(2) The Chief Executive Officer shall cause to be made such alterations in the register as are necessary to ensure that the matters recorded therein are accurate and up to date.

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

- (a) without payment by—
  - (i) any member, duly authorised public servant, or officer of a relevant regulatory body acting in the course of his duty; or
  - (iii) any person authorized by the Secretary to the Council; or
- (b) on payment of such fee as may be prescribed, by any other person.
- (c) The personal contact details shall not be made available to the public unless issued as prescribed by the Council or the member.

(4) The register shall be received in proceedings before any court or tribunal as evidence of the matters recorded therein with 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 an 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 purpose of this section.

### **Application for a practicing certificate and renewal**

22 (1) No person shall practice Credit Practice in Kenya unless he or she possesses a valid practicing certificate under this Act.

(2) A practicing certificate shall be issued on an annual basis and shall be valid from the date of issue to the 31st day of December of the calendar year of which it is issued and may be renewed on application by the Credit Professional if the applicant satisfies the following;

- a. is a member of the institute in good standing and practices Credit Practice in the course of his or her employment;
- b. makes the application not later than 15th December in the year preceding the year of renewal (or such later day as the Council may approve either generally or in respect of any application) in such form as the Council may specify;
- c. pays the registration fee fixed by the Council; and
- d. the applicant has satisfied the Council that he has complied with the requirements for the time being prescribed by the Council for continuing professional development.

(3) A person deemed to practice Credit Practice whether by himself or herself or in partnership with another person or using a firm name or a company shall be required to obtain a practicing license in addition to (a) above.

(4) A practicing license shall be issued on an annual basis and shall be valid from the date of issue to the 31st day of December of the calendar year of which it is issued and may be renewed on application by the Credit Professional.

(5) The council shall issue rules and regulations in relation to the issuance of the practicing certificate and practicing license.

### **Details of the firm and or sole practitioners**

23. Where a Fellow or a full member intends to carry out credit practice services as a firm whether as a sole practitioners or in a partnership, he shall furnish the Registration Committee with such details of the firm as it may require.

### **Cancellation of registration**

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

(a) if determination that the registration of the member cancelled is made under section 35(1)(i) and (j) of this Act; or

(b) if any circumstance arises which, if the member were then a person applying for registration, would disqualify him under section 17 from being registered.

(2) The Registration Committee shall not cancel the registration of a member under subsection 17 (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 17 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 subsection 1(c).

(5) When the registration of a member of the Institute is cancelled under section 24(1) (a) the Registration Committee shall restore the registration if, on an appeal made under section 35, the High Court allows the appeal.

(6) The Registration Committee shall upon request restore the registration of a person whose registration is cancelled under Section 24(4), if satisfied that all outstanding fees, subscriptions and other monies due to the Institute by the person concerned have been paid.

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

(8) The registration of a member shall be cancelled by recording in the register particulars of the cancellation.

(9) A person aggrieved by a determination of the Registration Committee under this section may appeal to an arbitrator appointed by the Council against such determination by lodging a written notice with the secretary to the Council within twenty-one days of his being notified of the determination.

(10) A person aggrieved by the decision of an arbitrator under subsection (9) may appeal to the High Court.

### **Resignation from membership**

25. (1) Any member may resign from membership of the Institute by writing under his hand delivered to the Secretary of the Registration Committee, provided that any such member shall be obliged to make payment of all outstanding subscriptions, fees and other monies due to the Institute as at the date of such resignation.

(2) Any member who is the subject of public criminal investigation or prosecution by the competent Kenyan authorities or whose conduct has been referred for inquiry under Section 33 or who is otherwise the subject of investigation or disciplinary proceedings under this Act shall not be entitled to resign from membership until all such investigative and disciplinary processes, including any appeal, have been completed.

(3) Any member who tenders his resignation with intent to avoid investigation and prosecution under this Act shall be guilty of professional misconduct and shall be subject to investigation and disciplinary proceedings in relation to that act along with any other professional misconduct or other alleged offence and such resignation shall be null and void and he shall remain in membership until all such investigative and disciplinary processes, including any appeal, have been completed.

### **Restoration to the Register**

26. A person may be restored to the register upon fulfilling the conditions as determined by the rules of the Institute or upon fulfillment of the terms of a decision suspending or cancelling his membership.

### **Practicing as a Credit Professional**

27. (1) No person shall hold themselves out as a credit professional or designation likely to create the impression that he or she is a Certified Credit Professional unless he or she is registered as a member of the Institute.

(2) No person shall engage in Credit practice unless he or she is a member of the Institute and a holder of a practicing certificate in force as issued under this Act.

(3) The Institute and the Examinations Board shall establish guidelines for students who

wish to engage in credit practice while taking the examinations.

(4) Any person who contravenes subsection (1), (2) commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a period not exceeding three years or to both.

(5) Any person who engages a person other than a Certified Credit Professional to do the work of a credit professional as defined in section 2 of this Act commits an offence and is liable on conviction to a fine not exceeding shillings five million or to imprisonment for a term not exceeding one year or both.

#### **D—Professional misconduct and disciplinary provisions**

##### **Acts of professional misconduct**

28. (1) A member of the Institute shall be guilty of professional misconduct if he—

- (a) allows any person to act in his name as a Certified Credit Professional while practicing Credit unless such person is a member of the Institute and a holder of a practicing certificate and or practicing license and is in partnership with him or employed by him as such;
- (b) enters, for the purpose of or in the course of practicing credit into partnership with a person who does not hold a practicing license, or secures any professional business through the services of such a person or by means not open to a Certified Credit Professional;
- (c) pays or allows or agrees to pay, directly or indirectly, to any person (other than a person who holds a practicing license, 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 practicing license;
- (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, other than with the consent of the client, or in compliance with written law or a court order;
- (g) develops or participates in developing a financial reporting system in any medium, electronic or otherwise whose aim is to falsify financial statements;
- (h) fails to observe and comply with applicable standards, codes, guidelines or other

pronouncements issued and published by the Council under this Act;

- (l) charges, in respect of any professional fees which are not in accordance with the guidelines issued by the council;
- (o) is guilty of gross negligence or of a series of instances of lesser negligence in the conduct of his professional duties;
- (p) 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;
- (q) fails to keep the funds of a client in a separate banking account or uses any such funds for purposes for which they are not intended;
- (r) includes any particular in any statement, return or forms to be submitted to the Institute item knowing it to be false; or
- (s) is found to engage in any other fraudulent acts; or
- (t) fails to do any other act which may from time to time be prescribed by the Council.
- (u) carries on the business of a Certified Credit Professional, without having obtained a practicing certificate and or practicing license;
- (v) fails to comply with the Institutes rules, by laws and code of ethics;
- (w) generally, doing any act which is likely to bring the profession into disgrace, disrepute, or contempt.

(2) Subsection (1) (f) shall not apply in respect of information disclosed to the Institute in fulfillment of the requirements of quality assurance provided for under section 12, and in fulfillment of the requirements of the investigations committee.

### **Investigations Committee**

- 29. (1) There shall be an Investigations Committee composed of 5 persons as the Council may so appoint one of whom shall be designated as its chairman.
- (2) The Investigations Committee shall be appointed for a term not exceeding 2 years but shall be eligible for reappointment for a further term not exceeding 2 years.
- (3) The vice chairman shall act in place of the Investigations Committee Chairman if the Investigation Committee Chairman is precluded by illness, absence from the country or any other cause from performing his functions as such.
- (4) A person who is a member of the Council shall be disqualified for membership of the Investigation committee and, accordingly, if a member of the Investigation committee becomes a member of the Council or is so appointed his membership to the Investigation committee shall thereupon cease.

- (5) Where the Investigations Committee informs the Disciplinary Committee that in its opinion there is a prima facie case against a Certified Credit Professional or a firm of Certified Credit Professional(s), the Disciplinary Committee shall commence proceedings.
- (6) No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the performance or exercise or purported performance or exercise of any function or power under this Part.
- (7) The provisions of the Fifth Schedule shall apply.

### **Disciplinary Committee**

- 30 (1) There shall be a committee of the Council to be known as the Disciplinary Committee.
- (2) The Disciplinary Committee shall consist of Seven 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—

Four members nominated by the Council from amongst the members of the Institute, of whom one shall be designated as the chairman;

- a) One nominated by the Council from another profession other than Credit Profession;
  - b) One member nominated by the Attorney General;
  - c) One nominated by Institute of Certified Public Secretaries of Kenya (ICPSK).
- (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 Credit Practice.
  - (5) The quorum of a meeting of the Disciplinary Committee shall be Four.
  - (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.

#### **Commencement of disciplinary proceedings**

31. (1) Subject to the provisions of this Act, the Disciplinary Committee may upon receipt of a written notice from the Investigations Committee commence disciplinary proceedings against a member suspected of professional misconduct pursuant to section 30 (1).

#### **Disregard of summons**

32 (1) A person to whom a summon or order is issued under section 35 and to whom such summons or order is served, who—

- (a) refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons;
  - (b) refuses, without sufficient cause, to answer fully and satisfactorily, questions put to him or her by or with the concurrence of the Committee; or
  - (c) refuses or omits, without sufficient cause, to produce any document in his or her possession or under his or her control, commits an offence and is liable to a fine not exceeding Kenya shillings one million, or to imprisonment for a term not exceeding six months or both.
- (2) A person giving evidence before an inquiry under this Part shall, in respect of evidence given by him or her or documents produced by him or her, be entitled to all the privileges to which he or she would be entitled as a witness before the High Court.
- (3) The provisions of the fourth Schedule shall apply to an inquiry by the Disciplinary Committee pursuant to subsection (1).

#### **Report to the Council and recommendations**

33. (1) On completion of disciplinary proceedings under section 29 into the alleged professional misconduct of a member of the Institute, the Disciplinary Committee shall submit to the Council a report of which shall include one or more of the following recommendations, namely—

- (a) that no further action be taken against the member;
- (b) that the member be reprimanded;
- (c) that 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) that the member pays such costs to the Institute, as may be determined;
  - (e) that the member undertakes training at his own cost, of such nature and duration and at such institutions as may be determined;
  - (f) that the member pays to the Institute a fine not exceeding Kenya shillings two million;
  - (g) that the member discharges his professional obligations under any contractual arrangement subject of the alleged misconduct;
  - (h) that any license held by the member be suspended for a certain period; or
  - (i) that his membership of the institute be suspended for a certain period, that his registration be suspended in like manner and that this be recorded in the register;
  - (j) that the member be expelled from membership of the Institute for a certain minimum period (or for life), that his registration be cancelled and that he be not registered for such period (including life) as may be specified and that this be recorded in the register.
- (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, on payment of such fee as may from time to time be set by the Council, appeal in writing to the Appeals Committee within thirty days of the communication to him of such determination, providing the grounds upon which the appeal is lodged.

#### **Gazettement of suspended members**

34. (1) Where the Chief Executive Officer is directed by the Council, he or she shall cause to be published by notice in the Gazette, the name of any member whose name has been removed or who has been suspended under this Part.

(2) A notice published in accordance with subsection (1) shall be *prima facie* evidence that the name of a member specified in the notice has been removed or the member so specified has been suspended from practice for the period specified in such notice.

#### **Appeals**

35. (1) A person aggrieved by a determination of the Disciplinary Committee under section 29 may, following completion of the processes set forth in section 33 (1) to (3), appeal to the High Court against such determination within fourteen days of being notified of the determination.

(2) An appeal against the decision of the Appeals Committee established under the fifth schedule against a decision under this Act may be made only where—

- (a) notice of appeal setting out the grounds of appeal has been served on the Institute within 14 days after the decision of the Disciplinary Committee is communicated to him or her; and
  - (b) the appeal is lodged with the Appeals Committee within 14 days after the notice referred to in paragraph (a) is served on the Institute.
- (3) A determination under this Act shall have effect notwithstanding that an appeal is made against the determination, unless the Disciplinary Committee expressly suspended the operation of its decision pending the outcome of such appeal or the aggrieved person has obtained from the Appeals Committee an order staying the operation of the decision of the Disciplinary Committee.

(4) Where the Chief Executive Officer is directed by the Council he or she shall cause to be published by notice in the Gazette, the name of any member whose name has been removed or who has been suspended under the provisions of this part.

(5) On an appeal the High Court may affirm, with or without variation, the period for which the person concerned is not to be registered, or the period for which his Credit Practicing license is suspended, confirm the determination of the Disciplinary Committee and Appeals committee or allow the appeal.

- (6) A determination under 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) sections of this Act shall have effect in relation to the cancellation of the registration of the member; and
  - (b) the suspension of the credit practicing license of the member of the Institute shall cease to have effect.

### **Appeal Rules**

36. (1) The Chief Justice may make rules governing appeal under section 35 and providing for the fees to be paid, the scale of costs of any appeal and the procedure to be followed therein.

(2) Until rules are made under subsection (1) of this section, and subject to any such rules, the provisions of the Civil Procedure Code (Cap. 21) shall apply as if the determination appealed against was a decree of a subordinate court exercising original jurisdiction.

### **Application of the rules to Certified Credit Professional**

37. For the avoidance of doubt it is declared that the provisions of this Part shall apply to any person registered as a Certified Credit Professional under the provisions of this Act for actions undertaken by such person while practicing under a written authority granted prior to the commencement of this Act.

### **E—Enforcement**

#### **Enforcement of investigative powers**

38. The Institute may in order to enforce compliance with the provisions of this Act have enforcement and investigative powers.

#### **Requirement to produce documents**

39 (1) For the purposes of obtaining full information, whether on a data storage device or otherwise, the Institute or an authorized officer of the Institute may require any person to—

- (a) Produce for examination, at such time and place as they may so require, any records and documents that are in the members custody or under the members control;
- (b) Furnish such information as may be required by the Institute;
- (c) Attend, at such time and place as may be required by the Institute for the purpose of giving evidence in respect of any matter as may have been obtained under the provisions of clause (a) and (b) above.

#### **Power to make copies**

40. (1) The Institute or an authorized officer carrying out the examination under Section 39—

- (i) may make copies of such records and documents for purposes of any report relating to the examination; and
- (ii) all information obtained in the course of the examination shall be treated as confidential and shall be used solely for the purposes of the Act.

(2) A person who, without reasonable excuse, fails to comply with any requirement made under subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) This section shall have effect notwithstanding—

- (a) any law relating to privilege or the public interest with respect to the giving of information or the production of any accounts, documents, or records (including in electronic format); or
- (b) any contractual duty of confidentiality.

## **F—Miscellaneous Provisions**

### **Monies payable to the Institute**

41. (1) There shall be payable to the Institute such moneys as deemed appropriate by Parliament, and such grants as may be recommended by the Cabinet Secretary and approved by parliament for purposes of the Institute.
- (2) The Cabinet Secretary may give directions as to the amount in which, and the times at which, moneys referred to in subsection (1), are to be paid to the Institute.
- (3) All the funds of the Institute and any balance at the end of the financial year shall be retained for the purpose for which the Institute is established. Any funds not immediately required for its purposes may be invested as the Council may direct.

### **Accounts and audit**

42. (1) The Institute shall keep proper accounts and records in relation to the accounts and shall each prepare in respect of each accounting year a statement of accounts.
- (2) The statement of accounts of the Institute shall, subject to the overriding provisions of the Public Audit Act 2015, or as may be re-enacted, be audited by auditors appointed by the Institute, as the case may be.
- (3) After the end of the financial year or other period to which the accounts examined and audited under subsection (2) relate, the Institute shall present the accounts to the general meeting of members.

### **Offences**

43. (1) A person who—
- (a) assumes or uses the title or designatory letters referred to in Section 4(1)(a) and who is not a Fellow of the Institute; or
  - (b) assumes or uses the title or designatory letters referred to in section 4 (1)(c) and who is not a full member of the Institute;
  - (c) assumes or uses the title “Honorary Fellow of the Institute of Institute of certified Credit

- Professionals of Kenya” and who is not such Honorary Fellow; or
- (d) otherwise falsely assumes or uses any title or designatory letters prescribed by the Council, commits an offence.
- (2) A body corporate (whether incorporated in Kenya or elsewhere) which falsely uses any of the titles or designatory letters referred to in section 4(1)(a) or (b) commits an offence.
- (3) Where a firm uses any of the titles or designatory letters referred to in section 4(1)(a) or (c) while not every partner in the firm is entitled to use such titles 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 Kenya shillings one million or one year imprisonment or both.
- (5) Any person shall commit an offence under this Act—
- (i) while not being a credit practitioner he purports to offer or offers credit practise services including giving credit opinion;
  - (ii) while being a member of the institute or not develops or participates in developing a credit reporting system in any medium, electronic or otherwise whose aim is to falsify statements;
  - (iii) while being a member of the Institute or not withholds any information that can be used during preparation of statements or report during an investigation.
- (6) Any person in contravention with the provisions of section 42(5) of this Act, is liable on conviction to imprisonment for a period not less than 3 years or a fine not exceeding one million or both.

#### **Conduct of prosecutions**

44. The Director of Public Prosecutions, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), shall appoint public prosecutors or an Advocate of the High Court of Kenya to be a public prosecutor for purposes of offences under this Act.

#### **Vacancy in membership**

45. The Council may exercise and perform its functions notwithstanding any vacancy in membership 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.

#### **Appointment of interim managers**

46. (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 Seventh Schedule.
- (2) The interim manager appointed under subsection (1) shall be the holder of a credit practise Certificate issued in accordance with the provisions of this Act.
- (3) The provisions of the Seventh Schedule shall have effect with respect to an interim manager appointed under this section.

**Regulations.**

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

## FIRST SCHEDULE

### THE COUNCIL

#### A. THE CHAIRMAN

1. (1) To be elected as Chairman one must—

- a) have been a member of the Institute or the former institute in good standing for a continuous period of not less than five years;
- b) Must have served in any of the Institute's committees for a period of not less than 2 years.
- c) is a person who meets the provisions of Chapter 6 of the Constitution,
- d) is not disqualified under the provisions of the Second Schedule;
- e) has not been found wanting by any other competent authority recognized by law; and

(2) The Chairman shall be elected by the voting membership of the Institute in an annual general meeting.

(3) Subject to the provisions of this Act concerning resignation, disqualification and termination, the Chairman shall hold office for a two years term, renewable once.

(4) A person who holds the office of Chairman may resign the office by writing under his hand delivered to the Council.

2. (1) During a vacancy in the office of Chairman, the vice Chairman shall assume the office of the Chairman until the next Annual General Meeting

(2) The appointment of a person to act as Chairman ceases to have effect—

- (a) if made during a vacancy in the office of Chairman, when the vacancy ends by the election of a Chairman;
- (b) if the person appointed resigns the office by writing under his hand delivered to the Council.

#### B. VICE-CHAIRMAN OF THE COUNCIL

4. (1) There shall be a Vice-Chairman of the Council who shall be elected by the members of the Institute—

(2) The Vice-Chairman shall hold office for the period of two years 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-Chairman may exercise and perform the functions of the Chairman if the Chairman is unable to exercise and perform those functions.

### C. MEMBERS OF THE COUNCIL

1. (1) Each of the four members of the Council referred to in section 13 of this Act shall be elected at an annual general meeting of the Institute.

(2) A member of the Council—

- (a) elected pursuant to subparagraph (1);
- (b) appointed pursuant to section 13 of this Act; or
- (c) co-opted pursuant to subparagraph (4),

shall, subject to the provisions of paragraph 4 relating to the vice-chairman, hold office for the prescribed period, unless he earlier ceases to hold office.

(3) The prescribed period shall be the period commencing on the date of election, appointment or co-option of a member to the Council to the commencement of the day on which the fourth annual general meeting thereafter is to be held.

(4) Elected Council members shall serve for a term of three years and subject to a re-election for one further term.

(5) Nominated council members shall serve for a term of three years renewable once.

(6) A third of the members elected under the provisions of section 13 shall serve for a full term of three years.

(7) No person shall serve in any capacity on the Council if—

- (a) being a member of the Institute, has been found guilty of an act of professional misconduct under section 28 of the Act, which in the opinion of the Council renders him unfit to hold the office; or
- (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; or
- (c) has been convicted of an offence involving corruption, dishonesty or abuse of office; or
- (d) has been adjudged bankrupt or has entered onto a composition of scheme of arrangement with his creditors.

(8) Subject to subparagraph (6), 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, the Council may co-opt a person to hold that office.

(9) Subparagraph (5) does not apply to the members of the Council appointed pursuant to section 13 of this Act.

2. The office of a member of the Council shall become vacant if such member—

- (a) resigns the office by writing under his hand delivered—
  - (i) in the case of the members appointed pursuant to section 13; 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 13;
- (c) ceases to hold the office in the case of the members appointed pursuant to section 13;
- (d) is adjudged bankrupt or enters into a composition or scheme or arrangement with his creditors; or,
- (e) is absent without the permission of the Council from three or more consecutive ordinary meetings of the Council; or
- (f) is convicted of an offence and sentence to imprisonment for a term of six months or more without the option of a fine; or,
- (g) is convicted of an offence involving corruption, dishonesty or abuse of office; or
- (h) being a member of the Institute is found guilty of an act of professional misconduct under section 28 of the Act, which in the opinion of the Council renders him unsuitable to continue to hold office; or
- (i) becomes for any reason, including infirmity of body or mind, incompetent or incapable of performing the functions of his office.

3. 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 13 of this Act, as the case may be.

## 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 financial 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 and signed by not less than one third of total membership of the Institute.

3 (1) A general 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 financial year;

- (ii) financial statements for the past financial year and the auditor's report thereon;
- (iii) election of the Chairman, as necessary in terms of paragraph 1, and of Council members; and
- (iv) the appointment of the auditor.

(2) Notice of a general meeting shall be given not less than twenty one days before the date on which it is to be held to each member of the Institute using the last known address or any other medium considered appropriate by the Institute.

(3) 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 deliberate.

4. (1) The Chairman shall preside at all general meetings of the Institute at which he is present.

(2) At a general meeting of the Institute at which the Chairman is not present, the Vice-Chairman shall preside.

(3) At a general meeting of the Institute at which neither the Chairman nor the Vice-Chairman are present, the members of the Institute present shall elect one of the members to preside.

5 (1) Subject to this paragraph, the quorum at a general meeting of the Institute shall be a third of the registered and paid-up members.

(2) Where a general meeting of the Institute is convened—

(a) otherwise than pursuant to paragraph 4 (b) of this Schedule, and a quorum is not present at the scheduled time of the meeting or within thirty minutes thereafter, the meeting shall stand adjourned until the same day on the following week, at the same time and place (unless that day is a public holiday, in which case the meeting shall stand adjourned to the first working day thereafter and if a quorum is not present at such adjourned meeting, the meeting shall proceed as though there were a quorum and all business conducted at such adjourned meeting shall be deemed to be validly transacted;

(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. (1) No business shall be transacted at an annual general 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) No business shall be transacted at a special general meeting of the Institute other than the business indicated in the notice of the meeting as business which it is proposed to transact.

(3) Minutes of the proceedings at general meetings of the Institute shall be kept in such a manner as the Chairman or in his absence the person at a particular meeting, directs.

7. The person presiding at a general meeting of the Institute may adjourn the meeting from time to time and from place to place, with the consent of a simple majority.

8. The person presiding at a general meeting of the Institute may in his discretion limit the number of persons permitted to speak in favour of or against any motion and the time any such person may so speak.

9. (1) Questions arising at a meeting shall be determined by consensus or 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 in writing and 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 any 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 shall suffice in evidence of that fact.

## **PROCEEDINGS**

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

11. 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.

12. 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.

## SECOND SCHEDULE

### THE REGISTRATION AND QUALITY ASSURANCE COMMITTEE

1. (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 Council.

(3) A member of the Registration Committee who ceases to hold office at the end of the prescribed term is eligible for re-appointment for one further term.

2. (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. (1) Where the result 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) 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. (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 court of law.

(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 to a fine not exceeding Kenya shillings fifty thousand on conviction.

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

7. The decision of the Registration Committee shall be that of the majority of the members present and voting.

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

9. 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.

### THIRD SCHEDULE

#### INVESTIGATIONS COMMITTEE

(1) The following provisions shall apply as regards the proceedings of an Investigation Committee—

- (a) any person to whom this paragraph applies, and whom the relevant Investigation Committee reasonably believes to have in his possession or under his control any record or other document which appears to that Committee as containing or being likely to contain information relevant to the proceedings of the Committee, shall subject to subsection (5)—
  - (i) produce to the Committee or afford to the Committee access to, any record or other document specified by the Committee which is of a class or description so specified and which is in his possession or under his control being in either case a record or other document which is or appears to the Committee to be relevant to the proceedings, within such time and at such place as the Committee may reasonably require;
  - (ii) if so required by the Committee, give to it or him such explanation or further particulars in respect of anything produced or to which access is given in compliance of a requirement under subparagraph (i) as the Committee shall specify;
  - (iii) give to the Committee all assistance in connection with its proceedings which he is reasonably able to give;
- (b) where any information or matter relevant to the proceedings of an Investigation Committee is recorded otherwise than in legible form, any power to require the production of any record or other document conferred under paragraph (a), shall include the power to require the production of a reproduction of any such information or matter

or of the relevant part of it in legible form;

(c) an Investigation Committee may inspect, examine or make copies of or take any abstract of or extract from a record or document which may be required to be produced under paragraph (a) or (b);

(d) where—

(i) a copy of any record or document is supplied by any person for the purposes of this section;

(ii) a copy of any record or document is made in the exercise of any power conferred under this section and a photocopying machine or other facility of a person is used to make such copy, the Institute shall reimburse the person concerned the reasonable photocopying or other expenses incurred in making such copy;

(e) a person exercising any power under this section by virtue of a delegation under section 9 shall, if so required by a person affected by such exercise, produce for inspection by such person the relevant instrument referred to in section 9 or a copy thereof.

(2) Subsection (1) applies—

(a) to the certified Credit Professional or firm of Certified Credit Professionals (practicing) to whom the Investigation Committee's proceedings relate and—

(i) where the proceedings relate to a certified Credit Professional, also to that certified credit Professionals employer and former employer (if any) and to any employee or former employee of such Certified Credit Professional

(ii) where the proceedings relate to a firm of Certified Credit Professionals (practicing) also to any employee or former employee of such firm and

(b) to any Certified Credit Professional, firm of Certified Credit Professionals (practicing) or corporate practice other than those specified in paragraph (a), and any employee or former employee of such Certified Credit Professional, firm or corporate practice who is a certified Credit Professional.

(3) A person who complies with a requirement of an Investigation Committee which is made by virtue of subsection (1) shall not incur any liability to any other person by reason only of the compliance.

(4) A person is not excused from complying with a requirement of an Investigation Committee under subsection (1) on the ground that to do so might tend to incriminate him but, where that person claims, before he answers a question put to him under subsection (1)(a)(ii), that

the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings.

(5) Nothing in this section shall be taken to compel the production by a person of a record or document containing a privileged communication by or to a legal practitioner in that capacity.

(6) An Investigations Committee may, by instrument in writing signed by its chairman, delegate to any person holding such qualifications as the Council may from time to time prescribe all or any of the powers conferred on it by section 29.

(7) A refusal by a person to comply with any requirement made under section 29 by a person to whom the relevant power is delegated under subsection (1) shall be treated as a refusal to comply with a requirement made under that section by the Investigations Committee.

(8) The Institute may pay fees at such rates as the Council may from time to time fix and such expenses as the Council may deem fit to members of an Investigations Committee, and to persons to whom the powers of the Investigation Committee have been delegated under section 29, for the performance by them of their duties or for any work done by them, and such fees and expenses shall form part of the expenses of and incidental to an investigation under this Part.

(9) Subject to subsection (2), and except in the performance, or assisting in the performance, of a function under this Part, any member of the Investigations Committee or the Council, any person to whom any of the powers of the Investigation Committee is delegated to or any person holding any other position who assists any of such persons in the performance of a function under this Part—

(a) shall at all times after his appointment as a member of the Investigation Committee or the Council, a person to whom any of the powers of the Investigations Committee is delegated under section 29 or to such other position, as the case may be, or during or after the performance of or assisting in the performance of such function, preserve and aid in preserving secrecy with regard to any matter coming to his knowledge in the performance or in assisting in the performance of any such function;

(b) shall not at any time communicate any such matter to any other person; and

(c) shall not at any such time suffer or permit any other person to have any access to any record, document or other thing which is in his possession or under his control by virtue of his being or having been so appointed or his having performed or having assisted any other person in the performance of such a function.

(3) any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding Kenya shillings one million or six months imprisonment or both

## FOURTH SCHEDULE

### DISCIPLINARY COMMITTEE

#### PROCEEDINGS ON INQUIRY

1. (1) The Council shall cause a statement to be prepared setting out the allegations 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.

3. (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 or other authorised representative at the time and place fixed in the notice served on him, the inquiry shall be adjourned. In the event of such non-attendance at a subsequent hearing of which notice has been given in accordance with sub-paragraph (2), the inquiry may proceed in absence of the person or his advocate.

3. (1) A person whose conduct is the subject of investigation may appear at the inquiry either personally or by his advocate.

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

4. (1) For the purpose of the conduct of the inquiry the Disciplinary Committee has power—

(a) to administer oaths;

(b) to summon persons 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 cost of the inquiry from any or all the parties involved in the proceedings as the Committee deems fit.

(2) An oath may be administered by any member of the Disciplinary Committee or by the Secretary to the Council.

(3) Notices, orders and summons of the Disciplinary Committee shall be issued under the hand of the Secretary to the Council.

5. (1) Subject to the rules of natural justice and fairness, the provisions of the Constitution of Kenya and to the provisions of this Schedule relating to inquiries—

- (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 or his nominee may attend meetings of the Disciplinary 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 he shall not be entitled to vote on any such matter.

6. (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 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 Chairman of the Disciplinary Committee also has a casting vote.

7. 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. (1) A person served with 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 or to make a solemn declaration in relation to the evidence he will give; or
- (b) refuses or fails to answer a question that he is required to answer by the Chairman 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. (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 appear 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. Proceedings on the inquiry shall be judicial proceedings for the purposes of Chapter XI of the Penal Code (Cap. 63).

## FIFTH SCHEDULE

### APPEALS COMMITTEE

1. There shall be an Appeals Committee which shall consist of five members as follows:
  - a. A senior or retired judge nominated by the Chief Justice;
  - b. Two former members of Council nominated by Council;
  - c. One member nominated by Council representing public interest;
  - d. An advocate of the High Court of Kenya of not less than 7 years standing.
2. The Appeals Committee shall, in consultation with the Institute, determine its own procedure for the hearing of appeals made in terms of subsection (1).
3. The Appeals Committee shall, in consultation with the Institute, formulate and issue such rules as it considers appropriate to deal with all matters related to the hearing of appeals.
4. Subject to subsection (2), any person aggrieved by a decision of the Disciplinary Committee made under section 35 (1) may appeal therefrom to the Appeals Committee.
5. An appeal to the Appeals Committee against a decision made under section 43 (3) may be made only where –
  - (a) notice of such appeal, setting out the grounds of appeal, has been served on the Institute within 14 days after the decision of the Disciplinary Committee is communicated to him or her; and
  - (b) the appeal is lodged with the Appeals Committee within 14 days after the notice referred to in paragraph (a) is served on the Institute.
6. The decision of the Disciplinary Committee to –
  - (a) suspend or remove the name of any member from the register;
  - (b) to withdraw or suspend his or her certificate of registration; or

(c) to withdraw a Certified Credit Professional practising certificate,

shall be effective immediately, notwithstanding any appeal which may be pending unless either the Disciplinary Committee expressly suspended the operation of its decision pending the outcome of such appeal or the aggrieved person has obtained from the Appeals Committee an order staying the operation of the decision of the Disciplinary Committee.

7. (1) A member aggrieved by a decision of the Appeals Committee may, within 14 days of the date of the decision, appeal to the High Court.

(2) A person aggrieved by a decision of the Appeals Committee refusing to remove the name of a member from the register, or to suspend such member may, within 14 days of the date of the decision, appeal to the High Court against such decision.

## SIXTH SCHEDULE

### APPOINTMENT OF INTERIM MANAGER

1. A member in practice shall be deemed to be incapacitated when an event occurs or the circumstances of that member, including his mental and physical health are such that, in the judgment of the Council and the person (if any) nominated by that member as an interim manager, supported by all other reasonably and readily available advice and information, the member is unlikely to be capable of running the practice in accordance with the provisions of this Act or of discharging the duties expected of him as a Certified Credit Professional within such period as the Council shall consider appropriate to safeguard the interests of clients and other stakeholders.

2. Every member who holds a credit practitioner's licence shall at such intervals as the Council may direct nominate another qualified member holding an credit practitioner's licence, 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. 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 66 of the Act and in that event, shall agree with the nominee the conditions of his appointment and confirm his duties and powers, as specified in sub-paragraph (4).

4. (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 (not exceeding two years) 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;
  - (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 shall 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 his own actions. The interim manager shall exercise due care, obtain 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 may not alter the name of the practice unless this is expressly provided for in the nomination agreement.

Where the nominating member has at the time of nomination of 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 (or, in the case of a deceased member, the best interest of his estate).

(5) 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. An interim manager shall within seven days of assuming office notify the Council of that fact.

(6) Where the Council appoints an interim manager, full details of the appointment shall be recorded by the Council and the acceptance thereof documented.

(7) The interim manager shall at intervals of six months, submit a report to the person that appointed him, 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 matter covered within the nomination agreement.

(8) Any aggrieved party shall tender a complaint to Council for deliberations.

## SEVENTH SCHEDULE

### TRANSITIONAL PROVISIONS

- (1) The Governing Council of the Institute of Credit Management registered under the societies Act existing before the enactment of this Act shall assume the responsibilities imposed on the Council and Registration Committee by this Act as an Interim Council and Interim Registration Committee until the first elections are held under this Act.
- (2) The chairperson elected at the last annual general meeting of the former Institute shall continue to act as chairperson of the Institute until the first elections held under this Act.
- (3) The Interim Council shall facilitate the registration of members of the Institute and the convening of the first annual general meeting at which Council members shall be elected.
- (4) The first annual general meeting of the Institute shall be convened by the Interim Council within a period of twelve months of the commencement of this Act.
- (5) Any Certified credit professional carrying out any business contrary to this Act shall ensure that the business is compliant with the Act within twelve months of the commencement of this Act.
- (6) “**former institute**” means the Institute of Credit Management (K) existing before the enactment of this Act, registered under societies Act under registration No. SOC /50534.