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THE PRESIDENCY

No. 228 **26 April 2021**

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 5 of 2021: Auditing Profession Amendment Act, 2021

OFISI YA MOPRESIDENTE

No. 228 **26 April 2021**

Mona ho tsebiswa hore Mopresidente o amohetse Molao ona o latelang, o phatlalatswang mona bakeng sa tsebiso ya setjhaba ka bophara:—

Nomoro 5 ya 2021: Phetolo ya molao wa profeshene ya hlahlobo ya dibuka tsa Tjhelete, 2021

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(English text signed by the President)
(Assented to 23 April 2021)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from the existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Auditing Profession Act, 2005, so as to insert a definition; to strengthen the governance of the Regulatory Board; to strengthen the investigating and disciplinary processes; to provide for the power to enter and search premises and to subpoena persons with information required for an investigation or disciplinary process; to provide for the power to issue a warrant for purposes of entering and searching of premises; to provide for processes to be followed after an investigation; to provide for sanctions in admission of guilt process and following a disciplinary hearing; to provide for offences relating to investigation and disciplinary process; to provide for the protection and sharing of information; to provide for transitional measures; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 26 of 2005, as amended by section 1 of Act 2 of 2015

1. Section 1 of the the Auditing Profession Act, 2005 (hereinafter referred to as the “principal Act”), is hereby amended by the insertion in subsection (1) after the definition of “company” of the following definition: 5

“**‘Constitution’** means the Constitution of the Republic of South Africa, 1996;”.

Amendment of section 4 of Act 26 of 2005

2. Section 4 of the principal Act is hereby amended by the addition of the following subsection: 10

“(3)(a) The Regulatory Board must determine a regulatory strategy for performing its functions in terms of subsection (1).

(b) The Regulatory Board must submit the regulatory strategy to the Minister for approval within three months after the date that the Auditing Profession Amendment Act, 2021, takes effect. 15

(c) The Minister—

- (i) may, after consulting the Regulatory Board, make amendments to the strategy referred to in paragraph (b); and
- (ii) must publish in the *Gazette* the approved regulatory strategy within six months after the date that the Auditing Profession Amendment Act, 2020, takes effect. 20

(English text signed by the President)
(Assented to 23 April 2021)

TLHALOSO KA KAKARETISO:

[] Mantswe a ka hara masakana a bontsha ho tlohelwa melaong e teng.
Mantswe a sehetsweng mola a bontsha ho kenngwa melao e teng.

MOLAO

Ho fetola Molao wa Profeshene ya Hlahlobo ya Dibuka tsa Tjhelete, wa 2005, ka ho kenya tlhaloso; ho matlafatsa puso ya Lekgotla la Bolaodi; ho matlafatsa tsamaiso ya dipatlisiso le kgalemelo; ho nehelana ka ho ka kena le ho fuputsa moaho le ho ka bitsa batho ba nang le lesedi le hlokaahalang bakeng la dipatlisiso kapa tsamaisong ya kgalemelo; ho nehelana ka matla a ho nehelana ka tumello bakeng la ho ka kena le ho fuputsa meaho; ho nehelana ka tsamaiso e tla salwa morao ka mora dipatlisiso; ho nehelana ka ditshitelo tse amanang le dipatlisiso le tsamaiso ya kgalemelo; ho nehelana ka tshireletso le ho arolelana lesedi; ho nehelana ka metjha ya nakwana; le ho nehelana ka dintlha tse amanang le tse mona.

HA E SE E NTSWE MOLAO ke Palamente ya Rephaboliki ya Afrika Borwa ka mokgwa o latelang:—

Phetolo ya karolo 1 ya Molao 26 wa 2005, jwalo ka ha o fetotswe ke karolo 1 ya Molao 2 wa 2015

1. Karolo 1 ya Molao wa Profeshene ya Hlahlobo ya Dibuka tsa Tjhelete, wa 2005 (o bitswang “Molao o ka sehloohong”) o fetotswe ka ho kenngwa ha karolwana (1) ka mora tlhaloso ya “khamphani” ka tlhaloso e latela:

“**‘Molaotheo’** e hlalosa Molaotheo wa Rephaboliki ya Afrika Borwa, 1996.”.

Phetolo ya karolo 4 ya Molao 26 wa 2005

2. Karolo 4 ya Molao o ka sehloohong o fetotswe ka ho kenngwa ha karolwana e latelang:

“(3)(a) Lekgotla la Taolo le tshwanetse ho hlway] lewa la taolo bakeng la ho ka etsa mesebetsi ya lona ho latela karolwana (1).

(b) Lekgotla la Taolo le tshwanetse ho nehelana ka lewa la taolo ho Letona bakeng la ho ka dumellwa nakong ya dikgwedi tse tharo ka mora letsatsi la hore Molao wa Phetolo ya Profeshene ya Hlahlobo ya Dibuka tsa Tjhelete, 2021, o kene tshebetsong.

(c) Letona—

(i) ka mora ho kopana le Lekgotla la Bolaodi, le ka e etsa diphetoho ho lewa le hlalotswang temaneng (b); le

(ii) le tshwanetse ho phatlalatsa lewa le dumelletsweng koranteng ya mmuso dikgweding tse tsheletseng ka mora letsatsi la ho kena tshebetsong ha Molao wa Phetolo ya Profeshene ya Hlahlobo ya dibuka tsa tjhelete.

(d) The Minister or the Regulatory Board may request an amendment to the regulatory strategy published in terms of paragraph (c) or a new regulatory strategy be determined in accordance with paragraph (c)."

Amendment of section 11 of Act 26 of 2005

3. Section 11 of the principal Act is hereby amended— 5
- (a) by the substitution for subsection (2) of the following subsection: 5
- “(2) The Minister must appoint competent persons **[, who must include registered auditors,]** who are independent of the auditing profession to effectively manage and guide the activities of the Regulatory Board, based on their knowledge and experience.”; 10
- (b) by the insertion after subsection (2) of the following subsection: 10
- “(2A) The members appointed in terms of subsection (2) must include—
- (a) two persons with at least 10 years’ experience in auditing who were formerly registered as auditors; and 15
- (b) two advocates or attorneys with at least 10 years’ experience in practicing law.”;
- (c) by the substitution for subsection (4) of the following subsection: 20
- “(4) **[Disregarding any vacancy in its membership, not more than 40% of the members of the Regulatory Board may be registered auditors]** None of the members appointed in terms of this section may be a registered auditor or registered candidate auditor.”;
- (d) by—
- (i) the deletion in subsection (7) of the word “and” at the end of paragraph (b); 25
- (ii) the substitution in subsection (7) at the end of paragraph (c) for the expression “.” of the expression “; and”; and
- (iii) the addition in subsection (7) after paragraph (c) of the following paragraph: 30
- “(d) the qualifications of every person appointed.”; and
- (e) by the addition after subsection (7) of the following subsections: 30
- “(8) No member may—
- (a) share, directly or indirectly, in any of the profits or interests of a registered auditor or any person related to a registered auditor; or 35
- (b) receive payments, excluding pension benefits, from a registered auditor.
- (9) For purposes of subsection (8)(a), ‘related’ means persons who are connected to one another in any manner contemplated in section 2(1)(a) to (c), read with section 2(2), of the Companies Act, 2008 (Act No. 71 of 2008).”.

Amendment of section 12 of Act 26 of 2005

4. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 45
- “(1) A member of the Regulatory Board appointed in terms of section 11 holds office for such period, but not exceeding **[two] three** years, as the Minister may determine at the time of his or her appointment.”.

Amendment of section 14 of Act 26 of 2005

5. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 50
- “(b) The chairperson and deputy chairperson each hold office for a period of **[two] three** years from the date of their appointment.”.

(d) Letona kapa Lekgotla la Bolaodi le ka kopa phetolo ho lewa la bolaodi le phatlaladitsweng ho latela temana (c) kapa lewa le letjha la bolaodi le ka hlwauwa ho latela temana (c).”.

Phetolo ya karolo 11 ya Molao 26 wa 2005

3. Karolo 11 ya Molao o ka sehloohong o fetotswe— 5

(a) ka ho fetola karolwana (2) ka karolwana e latelang:

“(2) Letona le tshwanetse ho kgetha batho ba nang le bokgoni [**ba tshwanetseng ho akga bahlahlobi ba dibuka tsa tjhelete,**] ba ikemetseng thoko ho profeshene ya bahlahlobi ba dibuka tsa tjhelete ho ka tsamaisa le ho tataisa mesebetsi ya Lekgotla la Taolo ka tsebo le boiphihlelo ba bona.”;

(b) ka ho kenya karolwana e latelang ka mora karolwana (2):

“(2A) Ditho tse kgethuweng ho latela karolwana (2) ditshwanetse ho akga—

(a) batho ba ba bedi ba nang ba ngodisitswe e le bahlahlobi ba dibuka tsa tjhelete mme ba na le bonyane boiphihlelo ba dilemo tse 10 hlahlobong ya dibuka tsa ditjhelete; le

(b) Diatfokate kapa diakgente tse pedi tse nang le bonyane dilemo tse 10 di sebetse ka molao.”;

(c) ka ho fetola karolwana (4) ka karolwana:

“(4) [**Ho se natse sekgeo se seng le se seng bothong ba yona, ditho tse sa feteng 40% tsa Lekgotla la Bolaodi e ka ba bahlahlobi ba dibuka tsa tjhelete ba ngodisitsweng**] Ditho tse sa thongwang ho latela karolo ena e ka ba mohlalobi wa dibuka tsa tjhelete ya ngodisitsweng kapa moithuti wa mohlalobi wa dibuka tsa tjhelete ya ngodisitsweng.”;

(d) ka—

(i) ho hlakolwa ha lentswe “le” pheletsong ya karolwana (7)(b);

(ii) phetolo karolwaneng (7) pheletsong ya temana (c) bakeng la polelo “.” ka polelo “; le”; le

(iii) ho kenyeletso karolwaneng (7) ka mora temana (c) ka temana e latela:

“(d) mangolo a motho e mong le e mong ya thontsweng.”; le

(e) ka kenyeletso ka mora karolwana (7) ya karolwana e latelang:

“(8) Ha ho setho se ka—

(a) arolelana, ka ho otlooha kapa ka mokgwa o mong, phaellong e nngwe le e nngwe ya mohlalobi wa dibuka tsa tjhelete ya ngodisitsweng kapa moithuti wa mohlalobi wa dibuka tsa tjhelete ya ngodisitsweng; kapa

(b) amohela ditefello ho tswa ho mohlalobi wa dibuka tsa tjhelete ya ngodisitsweng kapa ho moithuti wa mohlalobi wa dibuka tsa tjhelete ya ngodisitsweng.

(9) Bakeng la karolwana (8)(a) ‘mabapi’ e hlalosa batho ba amanang ka mokgwa o mong le o mong o hlalositweng karolong 2(1)(a) ho ya ho (c) e balwa mmoho le karolo 2(2) ya *Companies Act, 2008 (Act No. 71 of 2008)*.”.

Phetolo ya karolo 12 ya Molao 26 wa 2005

4. Karolo 12 ya Molao o ka sehloohong e fetotswe ka ho fetola karolwana (1) ya karolwana e latelang:

“(1) Setho sa Lekgotla la Bolaodi se thontsweng ho latela karolo 11 se sebetse bakeng la nako eo, empa e sa feteng dilemo tse [**pedi**] tharo, ka ha Letona le ka hlwaya ka nako ya ho thongwa ha hae.”.

Phetolo ya karolo 14 ya Molao 26 wa 2005

5. Karolo 14 ya Molao o ka sehloohong o fetotswe ka phetolo karolwaneng (1) bakeng la temana (b) ya temana e latelang:

“(b) Modulasetulo le motlatsi wa modulasetulo ba kena ofising nako ya dilemo tse [**pedi**] tharo ho tloha letsatsing le ba thontsweng ka lona.”.