

Zambia

## Zambia Institute of Marketing Act, 2022

### Act 2 of 2022

Legislation as at 12 April 2022

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# Zambia

## Zambia Institute of Marketing Act, 2022

### Act 2 of 2022

Published on 12 April 2022

Assented to on 8 April 2022

Commenced on 20 May 2022 by Statutory Instrument 35 of 2022

*[This is the version of this document from 12 April 2022.]*

**An Act to continue the existence of the Zambia Institute of Marketing and redefine its powers and functions; promote and enhance the marketing profession; provide for the registration of marketers and regulate their practice and professional conduct; repeal and replace the Zambia Institute of Marketing Act, 2003; and provide for matters connected with, or incidental to, the foregoing.**

ENACTED by the Parliament of Zambia.

### Part I – Preliminary provision

#### 1. Short title and commencement

This Act may be cited as the Zambia Institute of Marketing Bill, 2022, and shall come into operation on the date appointed by the Minister, by statutory instrument.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**associate**" has the meaning assigned to the word in the Anti-Corruption Act, 2012;

*[Act No. 3 of 2012]*

"**Board**" means the Advertising Standards Board established under section 32;

"**board member**" means a person appointed as a board member under section 32;

"**certificate of registration**" means the certificate of registration issued under section 14;

"**Chairperson**" means the person appointed Chairperson of the Disciplinary Committee under section 42;

"**chairperson**" means the person appointed chairperson of the Board or a Professional Conduct Committee under sections 32 and 37 respectively;

"**code of ethics**" means the code of professional conduct and ethics adopted and published by the Institute for the purposes of this Act;

"**Committee**" means the Marketers' Registration Committee established under section 11;

"**Competition and Consumer Protection Commission**" means the Competition and Consumer Protection Commission established under the Competition and Consumer Protection Act, 2010;

*[Act No. 24 of 2010]*

"**constitution**" means the constitution of the Institute adopted in accordance with section 5;

"**Council**" means the Council of the Institute constituted under section 8;

"**council member**" means a person elected as a council member under section 8;

"**Disciplinary Committee**" means the Disciplinary Committee of the Institute constituted under [section 42](#);

"**Fellow**" means a marketer registered under the Fellow class of membership in accordance with the constitution;

"**Higher Education Authority**" means the Higher Education Authority established under the Higher Education Act, 2013;

"**higher education institution**" has the meaning assigned to the words in the Higher Education Act, 2013; [\[Act No. 4 of 2013\]](#)

"**Independent Broadcasting Authority**" means the Independent Broadcasting Authority established under the Independent Broadcasting Authority Act, 2002;

[\[Act No. 17 of 2002\]](#)

"**Institute**" means the Zambia Institute of Marketing established under [section 3](#);

"**Law Association of Zambia**" means the Law Association of Zambia established under the Law Association of Zambia Act;

[\[Cap. 31\]](#)

"**legally disqualified**" means the absence of legal capacity as provided under section 4 of the Mental Health Act, 2019;

[\[Act No. 6 of 2019\]](#)

"**legal practitioner**" has the meaning assigned to the word "practitioner" in the Legal Practitioners Act;

[\[Cap. 30\]](#)

"**marketer**" means a person qualified in the theory, practice and discipline of marketing, acquired by training, education and practice in marketing, and includes a marketing organisation or unit carrying out marketing;

"**marketing**" means a societal process by which individuals and groups obtain what they need and want through creating, offering, and freely exchanging products and services of value with others and includes advertising, sales management, personal selling, marketing communications, public relations, publicity, sales promotions, exhibitions, branding, packaging, merchandising, distribution, warehousing, wholesaling, franchising, retailing, social marketing, digital marketing, international marketing, marketing research, marketing consultancy, business development, customer service, customer care and service marketing;

"**marketing organisation**" means a statutory corporation, a company, a firm, a partnership or a training institution carrying out marketing;

"**member**" means a person registered as a member of the Institute in accordance with the provisions of the constitution and "membership" shall be construed accordingly;

"**practising certificate**" means a practising certificate issued under [section 21](#) authorizing a person to practice as a marketer;

"**President**" means the person elected as President of the Institute under [section 6](#);

"**Professional Conduct Committee**" means a Professional Conduct Committee constituted under [section 37](#);

"**professional misconduct**" means the conduct referred to under [section 35](#);

"**register**" means a register of the Institute referred to under [section 28](#);

"**Registrar**" means the person appointed Registrar under [section 10](#);

"**relative**" has the meaning assigned to the word in the Anti-Corruption Act, 2012;

[Act No. 3 of 2012]

"**repealed Act**" means the Zambia Institute of Marketing Act, 2003;

[Act No. 14 of 2003]

"**Vice-Chairperson**" means the person appointed as Vice-Chairperson of the Disciplinary Committee under [section 42](#);

"**vice-chairperson**" means the person appointed as vice-chairperson of the Board or a Professional Conduct Committee under [sections 32](#) and [37](#), respectively;

"**Vice-President**" means the person elected as Vice-President of the Institute under [section 6](#);

"**Zambia Bureau of Standards**" means the Zambia Bureau of Standards established under the Standards Act, 2017;

[Act No. 4 of 2017]

"**Zambia Information and Communications Technology Authority**" means the Zambia Information and Communications Technology Authority established under the Information and Communication Technologies Act, 2009; and

[Act No. 15 of 2009]

"**Zambia Qualifications Authority**" means the Zambia Qualifications Authority established under the Zambia Qualifications Authority Act, 2011.

[Act No. 13 of 2011]

## Part II – The Zambia Institute of Marketing

### 3. Continuation of Zambia Institute of Marketing

- (1) The Zambia Institute of Marketing established under the repealed Act is continued as if established under this Act and is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to the provisions of this Act, to do all acts and things that a body corporate may, by law, do or perform.
- (2) The First Schedule applies to the Institute.

### 4. Functions of Institute

- (1) The functions of the Institute are to—
  - (a) advance the marketing profession and related disciplines and promote its interests;
  - (b) register and regulate marketers;
  - (c) issue practising certificates to eligible members;
  - (d) register students of marketing;
  - (e) promote, uphold and improve the standards of training, practice and professional competence of persons engaged in marketing in the Republic;
  - (f) conduct learning programmes accredited by the Higher Education Authority for persons in marketing;
  - (g) publish text books, journals, pamphlets, newsletters or papers in marketing;
  - (h) regulate the standards of advertising in marketing;

- (i) develop, promote and enforce internationally comparable marketing practice standards in the Republic;
  - (j) provide continuous professional development to marketers;
  - (k) encourage and promote research into a matter affecting the marketing profession;
  - (l) promote ethical and responsible practice among marketers in the marketing profession and related disciplines;
  - (m) investigate cases of professional misconduct under this Act;
  - (n) promote awareness among marketers in matters relating to marketing education, practice and regulation;
  - (o) hold meetings for the reading and discussion of papers for professional interest and development;
  - (p) make awards to authors of papers of special merit in marketing and recognise outstanding marketing personalities;
  - (q) collaborate with higher education institutions, Government departments and other institutions to improve the quality of the marketing profession; and
  - (r) provide advisory and consultancy services in marketing.
- (2) The Institute may determine—
- (a) the fees payable for an inspection conducted or other services rendered for the purposes of this Act; and
  - (b) what portion of any fee is payable in respect of any part of a year and the date on which the fee or portion of the fee is payable.

## 5. Constitution of Institute

- (1) The Institute shall, by a vote of at least two-thirds of the members voting at a general meeting of the Institute, adopt a constitution and may, in a like manner, amend it.
- (2) Subject to this Act, the constitution shall regulate the conduct of the affairs of the Institute.
- (3) The constitution may provide for the—
  - (a) meetings of the Institute, including the delivery of notices of the meetings, the quorum, voting, adjournments and other matters of procedure or conduct of the meetings;
  - (b) election, qualifications and tenure of office of the President, Vice-Presidents and other office bearers of the Council;
  - (c) composition, functions, powers and procedures of the committees of the Institute;
  - (d) classes of membership and their rights, privileges and obligations; and
  - (e) any other matter that the membership may determine.

## 6. President and Vice-Presidents of Institute

The members shall elect the President and Vice-Presidents of the Institute in accordance with the provisions of the constitution.

## 7. Meetings of Institute

- (1) Subject to this Act, the Institute may regulate its own procedure.



- (2) The meetings of the Institute shall be conducted in accordance with the provisions of the constitution.
- (3) The validity of any proceedings, acts or decisions of the Institute shall not be affected by a person's absence from a meeting of the Institute or by reason that a person not entitled to do so took part in the proceedings of a meeting of the Institute.

## 8. Council of Institute

- (1) There is constituted the Council of the Institute which shall be responsible for the management and control of the affairs of the Institute.
- (2) The Council consists of the following council members elected in accordance with the provisions of the constitution:
  - (a) the President, who is a Fellow;
  - (b) the Vice-President responsible for policy, who is a Fellow;
  - (c) the Vice-President responsible for finance, who is a Fellow;
  - (d) a Council Secretary;
  - (e) a Vice-Council Secretary;
  - (f) a Treasurer;
  - (g) a Vice-Treasurer;
  - (h) a Publicity Secretary;
  - (i) a Vice-Publicity Secretary; and
  - (j) the immediate past President of the Council.
- (3) The President and Vice-President responsible for policy shall be the chairperson and vice-chairperson of the Council, respectively, in accordance with the constitution.
- (4) A person shall not be elected as a council member if that person—
  - (a) is found guilty of professional misconduct under this Act;
  - (b) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine;
  - (c) is an undischarged bankrupt;
  - (d) is legally disqualified from performing the functions of a council member; or
  - (e) is convicted of an offence involving fraud or dishonesty under this Act or any other written law.
- (5) The First Schedule applies to the Council.

## 9. Functions of Council

- (1) The functions of the Council are to perform the executive functions of the Institute.
- (2) Despite the generality of subsection (1), the functions of the Council are to—
  - (a) promote an understanding of professional ethics among the members;
  - (b) ensure that the rules and guidelines for professional ethics developed by the Institute are responsive to the expectations of the public and the institutions served by a marketer;

- (c) refer a matter for investigation to a Professional Conduct Committee or Disciplinary Committee in accordance with Part V;
  - (d) make recommendations relating to the marketing profession to the general meeting of the Institute;
  - (e) set, establish and monitor standards for persons employed in marketing management;
  - (f) approve the policies, programmes and strategic plan of the Institute;
  - (g) approve the annual workplan, action plans, activities and reports of the Institute;
  - (h) approve the annual budget estimates and financial statements of the Institute;
  - (i) monitor and evaluate the performance of the Institute against budgets and plans; and
  - (j) advise the Minister on matters relating to marketing practice.
- (3) The Council may, by direction in writing and on conditions that the Council considers necessary, delegate to the Registrar any of the Council's functions under this Act.

## **10. Registrar and other staff**

- (1) The Council shall appoint a Registrar, on the terms and conditions that the Council may determine, who shall be—
  - (a) the chief executive officer of the Institute; and
  - (b) responsible for the day-to-day administration of the Institute.
- (2) The Registrar shall be a marketer with a valid practising certificate issued under this Act.
- (3) The Registrar shall attend meetings of the Council or a committee of the Council and may address those meetings, but shall have no vote.
- (4) The Council shall appoint other staff of the Institute that the Council considers necessary for the performance of the functions of the Institute.
- (5) The Council shall determine the conditions of service and emoluments of the Registrar and other staff of the Institute.

## **Part III – Registration of marketers and issuance of practising certificates**

### **11. Registration of marketer**

- (1) There is established a marketers Registration Committee of the Council which is responsible for performing the registration functions of the Institute.
- (2) The membership, tenure of office, procedure of meetings and quorum of the Committee shall be in accordance with the constitution.
- (3) The Committee shall register an applicant as a marketer if the Committee is satisfied that the applicant—
  - (a) has met the requirements for membership as provided in the constitution;
  - (b) possesses knowledge, training and experience as may be prescribed;
  - (c) holds a qualification recognised and validated by the Zambia Qualifications Authority;
  - (d) passes the membership examinations of the Institute;
  - (e) is of good professional standing;

- (f) is resident in the Republic, or has an established office or appointment in the Republic in the marketing profession; and
  - (g) meets other requirements that the Minister may, on the recommendation of the Institute, prescribe by statutory instrument.
- (4) The Committee shall register a marketer in accordance with the categories and classes of membership prescribed in the constitution.

## 12. Prohibition of practising without registration

- (1) A person shall not be employed or practice as a marketer without registering with the Institute in accordance with this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

## 13. Application for registration as marketer

- (1) A person who intends to be employed or to practice as a marketer in the Republic shall apply to the Institute for registration in the prescribed manner and form on payment of a prescribed fee.
- (2) The Institute may determine different fees for different classes of marketers.
- (3) The Institute may, within thirty days of receipt of an application under subsection (1), approve or reject the application.
- (4) The Institute shall, where it rejects an application under subsection (3), inform the applicant and give reasons for the decision.

## 14. Issuance of certificate of registration

- (1) The Institute shall, where the Institute approves an application under [section 13](#), issue a marketer with a certificate of registration in the prescribed form showing that marketer's class of membership.
- (2) A certificate of registration shall remain the property of the Institute and shall have an unlimited period of validity, unless suspended or cancelled under this Act.

## 15. Disqualification from registration

A person shall not qualify for registration as a marketer if that person is—

- (a) convicted of an offence involving fraud or dishonesty under this Act or any other written law in the preceding five years prior to the registration;
- (b) convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine;
- (c) legally disqualified; or
- (d) an undischarged bankrupt.

## 16. Title for registered marketer

A registered marketer shall use the title or designation as prescribed in the constitution.

## 17. Change in details

A marketer registered under this Act shall notify the Registrar of any change in the particulars relating to the registration within seven days of the change.

## 18. Suspension and cancellation of registration

- (1) Subject to this Act, the Institute may suspend or cancel the registration of a marketer where—
  - (a) the Institute has reasonable grounds to believe that the registration was obtained through fraud, misrepresentation or concealment of a material fact;
  - (b) the marketer is found guilty of professional misconduct under this Act or the code of ethics and the Disciplinary Committee orders the suspension or cancellation of the marketer's certificate of registration;
  - (c) the marketer is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine;
  - (d) the marketer is convicted of an offence involving fraud or dishonesty under this Act or any other written law; or
  - (e) since the registration, circumstances have arisen disqualifying the marketer from registration.
- (2) The Institute shall, before suspending or cancelling the registration under subsection (1), give the marketer an opportunity to be heard.
- (3) The Institute may, before cancelling the registration of a marketer, suspend the marketer for a specified period on terms and conditions that the Institute may determine.
- (4) Where the Institute cancels the registration of a marketer under this section, the name of the marketer shall be removed from the register and shall not be restored except on conditions as may be prescribed and on payment of a prescribed fee.

## 19. Re-registration

A person whose certificate of registration is cancelled or suspended under [section 18](#) may, subject to the terms and conditions that the Institute may determine, apply for re-registration.

## 20. Prohibition of practising without valid practising certificate

- (1) A person shall not practice as a marketer without a valid practising certificate issued to that person by the Institute under this Act.
- (2) A person shall not offer employment to a person who does not hold a valid practising certificate issued under this Act.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

## 21. Practising certificate

- (1) A marketer shall apply to the Institute for a practising certificate in the prescribed manner and form on payment of a prescribed fee.

- (2) The Institute shall, within thirty days of the receipt of an application under subsection (1), issue the applicant with a practising certificate in the prescribed form if the Institute is satisfied that the applicant—
  - (a) is of good character and good professional standing; and
  - (b) meets the requirements as prescribed.
- (3) A practising certificate issued under this section shall contain terms and conditions that the Institute may determine.

## **22. Display of practising certificate**

A holder of a practising certificate shall display the practising certificate in a conspicuous place at the place of practice.

## **23. Renewal of practising certificate**

- (1) A practising certificate shall be renewed annually in the prescribed manner and form on payment of a prescribed fee.
- (2) A practising certificate that is not renewed in accordance with subsection (1) is void.

## **24. Suspension and cancellation of practising certificate**

- (1) Subject to this Act, the Institute may suspend or cancel a practising certificate if the holder—
  - (a) is found guilty of professional misconduct and the Disciplinary Committee orders the suspension or cancellation of the practising certificate;
  - (b) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine;
  - (c) is convicted of an offence involving fraud or dishonesty under this Act or any other written law;
  - (d) is legally disqualified;
  - (e) is an undischarged bankrupt;
  - (f) obtained the practising certificate through fraud, misrepresentation or concealment of a material fact; or
  - (g) is deregistered under this Act.
- (2) The Institute shall, before suspending or cancelling a practising certificate of a marketer, give the marketer an opportunity to be heard.
- (3) The Institute may, before cancelling a practising certificate of a marketer, suspend the marketer for a specified period and on terms and conditions that the Institute may determine.
- (4) A practising certificate of the holder of the certificate of registration is void where a certificate of registration is cancelled under this Part.

## **25. Surrender of cancelled certificate of registration or practising certificate**

A marketer whose certificate of registration or practising certificate is cancelled shall, within seven days of being notified of the cancellation, surrender the certificate of registration or practising certificate to the Institute.

## 26. Prohibition of transfer of certificate of registration or practising certificate

A certificate of registration or practising certificate issued under this Act shall not be transferred to a third party.

## 27. Duplicate certificate of registration or practising certificate

- (1) A marketer whose certificate of registration or practising certificate is destroyed or lost may apply to the Registrar for a duplicate certificate in the prescribed manner and form on payment of a prescribed fee.
- (2) The Registrar may, within fourteen days of receipt of an application under subsection (1), issue a duplicate certificate of registration or practising certificate to the applicant.

## 28. Register

- (1) The Institute shall keep and maintain a register of all persons registered under this Act in which the Registrar shall enter the details and particulars relating to—
  - (a) registered marketers;
  - (b) the holders of certificates of registration or practising certificates and persons whose certificates of registration or practising certificates are cancelled or suspended;
  - (c) the applications rejected and the reasons for the rejection; and
  - (d) any other information that the Institute may determine.
- (2) The register shall be kept in the custody of the Registrar at the offices of the Institute and shall be open for inspection to members of the public during normal office hours on payment of a fee that the Institute may determine.
- (3) The Registrar shall, on an application by a person, issue to the person a certified extract from the register or a copy of a certificate of registration or practising certificate, on payment of a fee as the Institute may determine.

## 29. Maintenance of non-practising marketer on register

The Institute may, where a holder of a practising certificate does not intend to practice as a marketer for a specified period of time, maintain the name of the holder of the practising certificate on the register, in a non-practising category, for that period of time.

## 30. Publication of copies of register

- (1) The Registrar shall, on the direction of the Council, cause copies of the register and any alterations of, or additions to, the register to be printed and published in a manner and form that the Council may direct.
- (2) Subject to this Act, a copy of the last published and printed register is *prima facie* evidence in legal proceedings of what is contained in that register and the absence of the name of a marketer from that copy is *prima facie* evidence that the marketer is not registered.

## 31. Offences relating to registration

- (1) A person shall not—
  - (a) make or cause to be made an unauthorised entry, alteration or erasure in the register, a certificate of registration or practising certificate, or on a certified copy of the register, certificate of registration or practising certificate;

- (b) impersonate or use the title of a marketer while not registered as a marketer under this Act;
  - (c) procure, or attempt to procure registration under this Act by fraud, misrepresentation or the concealment of a material fact; or
  - (d) forge a certificate of registration, practising certificate or other document issued under this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

## Part IV – Advertising in marketing

### 32. Establishment of Advertising Standards Board

- (1) There is established an Advertising Standards Board of the Institute that shall regulate advertising standards in marketing in the Republic.
- (2) The Board consists of the following part-time board members appointed by the Council:
- (a) the Vice-President responsible for policy, who is a fellow, as chairperson;
  - (b) a member of the Institute, who is a Fellow;
  - (c) a representative of—
    - (i) the Competition and Consumer Protection Commission;
    - (ii) the Zambia Bureau of Standards;
    - (iii) the Zambia Information and Communications Technology Authority;
    - (iv) the Independent Broadcasting Authority;
    - (v) Zambia Tourism Agency;
    - (vi) the ministry responsible for local government and rural development;
    - (vii) the ministry responsible for commerce trade and industry;
    - (viii) business association;
    - (ix) the marketing profession; and
    - (x) academia; and
  - (d) a member of the public representing consumers.
- (3) The board members shall elect the vice-chairperson from among themselves.
- (4) A board member shall subject to the other provisions of this Act, hold office for a term of two years and maybe re-appointed for a further and final term of two years.
- (5) A board member shall on the expiration of the term for which the board member is appointed, continue to hold office until another board member is appointed, but in no case shall the extension of the term exceed three months.
- (6) The office of a board member becomes vacant if the board member—
- (a) dies;
  - (b) is adjudged bankrupt under any written law;
  - (c) resigns, by notice in writing, to the Council;

- (d) is legally disqualified from performing the functions of a board member;
  - (e) in the case of a board member under subsection (2)(a) and (b)—
    - (i) the certificate of registration or practising certificate is cancelled under this Act; or
    - (ii) is found guilty of professional misconduct;
  - (f) in the case of a board member under subsection (2)(c) and (d), ceases to be a representative of the organisation or sector from which the board member was appointed;
  - (g) is absent from three consecutive meetings of the Board of which the board member had notice without the prior approval of the Board; or
  - (h) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine.
- (7) The Registrar shall be the Secretary to the Board.

### 33. Proceedings of Board

- (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.
- (2) The Board shall meet to adjudicate on a complaint at least fourteen days after receipt of a complaint.
- (3) Five board members shall form a quorum at a meeting of the Board.
- (4) There shall preside at a meeting of the Board—
  - (a) the chairperson;
  - (b) in the absence of the chairperson, the vice-chairperson; or
  - (c) in the absence of both the chairperson and the vice-chairperson, another board member that the board members present shall elect for the purpose of that meeting.
- (5) Where a board member is unable to attend a meeting of the Board, that board member shall not nominate another person to attend in that board member's stead.
- (6) A decision of the Board on a question shall be by a majority of the board members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.
- (7) The Board may invite a person whose presence is in the Board's opinion desirable to attend and participate in the deliberations of a meeting, but that person shall have no vote.
- (8) The validity of any proceedings, acts or decisions of the Board shall not be affected by a vacancy in the membership of the Board or by any defect in the appointment of a board member or by reason that a person not entitled to do so, took part in the proceedings.
- (9) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board.

## Part V – Disciplinary matters

### 34. Code of ethics

The Council shall adopt and publish a code of ethics for marketers which shall bind marketers regulated under this Act.



### 35. Professional misconduct

A marketer commits professional misconduct if the marketer—

- (a) contravenes a provision of this Act;
- (b) allows a person, other than a registered marketer in that marketer's company or institution to practice in the name of the marketer;
- (c) unlawfully discloses or uses to the marketer's advantage any information acquired in the practice of the marketer;
- (d) engages in conduct that is dishonest, fraudulent or deceitful;
- (e) permits the marketer's name or the name of the marketer's firm to be used in connection with technical specifications or financial calculations contingent on future transactions in the manner which may lead people to infer that the marketer vouches for the accuracy of the information;
- (f) charges for professional work, fees which are higher than those approved by the Council;
- (g) in a report in which the marketer's client has an interest, fails to disclose or knowingly conceals from the client misstatements or facts known to the marketer and the disclosure of which is necessary in order that the report does not mislead, or give an opinion in a professional capacity without obtaining sufficient information on the subject; or
- (h) breaches the code of ethics or encourages another marketer to breach or disregard the code of ethics.

### 36. Initiation of disciplinary action

- (1) A person may lodge a complaint with the Institute against a marketer where that person alleges that the marketer has contravened the code of ethics or any provision of this Act.
- (2) The Institute may initiate disciplinary action under this section where the Institute has reasonable grounds to believe that a marketer has contravened the code of ethics or any provision of this Act.
- (3) A complaint or allegation shall be made to the Registrar in the prescribed manner and form.

### 37. Professional Conduct Committee

- (1) The Council shall constitute an *ad hoc* Professional Conduct Committee for each province, and progressively each district consisting of not more than five part-time members who are registered as marketers.
- (2) The members shall elect the chairperson and vice-chairperson from among themselves.
- (3) A person shall not be appointed as a member of a Professional Conduct Committee if that person—
  - (a) is found guilty of professional misconduct under this Act;
  - (b) is an undischarged bankrupt;
  - (c) is legally disqualified from performing the functions of a member;
  - (d) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine.
- (4) A member of a Professional Conduct Committee shall hold office for a term of two years and may be appointed for a further and final term of two years.
- (5) A member shall, on expiration of the term for which the member is appointed, continue to hold office until another member is appointed, but in no case shall an extension of the period exceed three months.

- (6) The office of a member becomes vacant if the member—
  - (a) dies;
  - (b) is adjudged bankrupt under any written law;
  - (c) is absent from three consecutive meetings of the Professional Conduct Committee of which the member has notice, without the prior approval of the Professional Conduct Committee;
  - (d) resigns, by notice in writing, to the Council;
  - (e) is legally disqualified from performing the functions of a member;
  - (f) is found guilty of professional misconduct;
  - (g) is deregistered under this Act; or
  - (h) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine.
- (7) The Council shall, where there is a vacancy in the membership of the Professional Conduct Committee before the expiry of the term of office, appoint another person to replace the member who vacates office, but that person shall only hold office for the remainder of the term.

### **38. Referring of matters to Professional Conduct Committee**

Except as otherwise expressly stated, before a matter is referred to the Disciplinary Committee, the Institute shall, in the prescribed manner, refer that matter for investigation by a Professional Conduct Committee.

### **39. Functions of Professional Conduct Committee**

- (1) A Professional Conduct Committee shall investigate a matter referred to it by the Institute.
- (2) Where a case has been referred to a Professional Conduct Committee, that Professional Conduct Committee shall consider the case and subject to the provisions of this section, determine either—
  - (a) that no inquiry shall be held in the case by the Disciplinary Committee; or
  - (b) that the matter in question shall, in whole or in part, be referred to the Disciplinary Committee for inquiry.
- (3) Where a Professional Conduct Committee determines that no inquiry shall be held in a case by the Disciplinary Committee, the Registrar shall inform the complainant, if any, and the marketer of the decision of the Professional Conduct Committee on terms as the Professional Conduct Committee may direct.
- (4) A Professional Conduct Committee shall, if it considers it just, cause further investigations to be done, or obtain advice or assistance from any person that the Professional Conduct Committee considers necessary.
- (5) Where a Professional Conduct Committee determines that further investigations are necessary, or where at the time when a Professional Conduct Committee is considering the case no explanation is furnished by the marketer against whom a complaint has been lodged, the Professional Conduct Committee may make a provisional determination that the matter, in whole or in part, be referred to the Disciplinary Committee.
- (6) Where a Professional Conduct Committee makes a provisional determination in accordance with subsection (5) and further investigations are concluded or an explanation is subsequently furnished by the marketer, the chairperson may, in consultation with the members of the Professional

Conduct Committee and on the opinion of the majority of the members of the Professional Conduct Committee, direct that—

- (a) an inquiry shall not be held in the case by the Disciplinary Committee; or
  - (b) the matter be referred to the Disciplinary Committee for inquiry.
- (7) Where a direction is given in accordance with subsection (6)(a), the Registrar shall inform the complainant, if any, and the marketer of the decision of the Professional Conduct Committee on terms that the Professional Conduct Committee may direct.

#### **40. Proceedings of Professional Conduct Committee**

- (1) Subject to this Act, a Professional Conduct Committee may regulate its own procedure.
- (2) Three members of a Professional Conduct Committee shall form a quorum at a meeting or sitting of a Professional Conduct Committee.
- (3) The chairperson, or in the absence of the chairperson, the vice-chairperson, shall preside at a meeting or sitting of a Professional Conduct Committee.
- (4) A question at a sitting or meeting of a Professional Conduct Committee shall be decided by a majority of the members present at a sitting or meeting, and in the event of an equality of votes, the person presiding at the sitting or meeting shall have a casting vote in addition to that person's deliberative vote.
- (5) A party to a hearing of a Professional Conduct Committee may appear in person or be represented by a legal practitioner or, if the party so elects, by any other person.
- (6) A person who is present at a meeting or sitting of a Professional Conduct Committee, at which a matter is the subject of consideration and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity, shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not, unless the Professional Conduct Committee otherwise directs, take part in a consideration or discussion of, or vote on, a question relating to that matter.
- (7) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.
- (8) A Professional Conduct Committee shall cause to be kept a record of its proceedings.

#### **41. Sanctions for marketer by Professional Conduct Committee**

A Professional Conduct Committee may, where a Professional Conduct Committee determines that no inquiry shall be held in the case by the Disciplinary Committee but finds a marketer guilty of professional misconduct, impose any of the following sanctions:

- (a) counseling, mentorship or censure of the marketer;
- (b) cautioning the marketer;
- (c) that the marketer pays an administrative penalty not exceeding fifty thousand penalty units to the Institute;
- (d) that the marketer pays to the Institute or any other party to the hearing any costs of, or incidental to, the proceedings;
- (e) retraining or rehabilitation of the marketer; or
- (f) suspension of the marketer.

## 42. Disciplinary Committee

- (1) There shall be a Disciplinary Committee of the Institute elected at the Annual General Meeting of the Institute which consists of the following part-time members:
  - (a) the Chairperson, who is a Fellow;
  - (b) the Vice-Chairperson, who is a member;
  - (c) four registered members; and
  - (d) a legal practitioner nominated by the Law Association of Zambia.
- (2) A person shall not be appointed as a member of the Disciplinary Committee if that person—
  - (a) is found guilty of professional misconduct under this Act;
  - (b) is an undischarged bankrupt;
  - (c) is legally disqualified from performing the functions of a member;
  - (d) in the case of a member under subsection (1)(a), (b) and (c), has not been on the register of marketers for at least ten years preceding the appointment; or
  - (e) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a period exceeding six months without the option of a fine.
- (4) A member of the Disciplinary Committee shall hold office for a term of two years and may be re-elected or re-nominated for a further and final term of two years.

*[Please note: numbering as in original.]*

- (5) A member shall, on expiration of the term for which the member is appointed continue to hold office until another member is appointed but in no case shall an extension of the period exceed three months.
- (6) The office of a member becomes vacant if the member—
  - (a) dies;
  - (b) is adjudged bankrupt under any written law;
  - (c) is absent from three consecutive meetings of the Disciplinary Committee of which the member has notice, without the prior approval of the Disciplinary Committee;
  - (d) resigns by notice, in writing, to the Council;
  - (e) is legally disqualified from performing the duties of a member of the Disciplinary Committee;
  - (f) is found guilty of professional misconduct;
  - (g) is de-registered under this Act or any other written law; or
  - (h) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine.
- (7) The Council shall, where there is a vacancy in the membership of the Disciplinary Committee before the expiry of the term of office, appoint another person to replace the member who vacates office but that person shall only hold office for the remainder of the term.
- (8) The Registrar shall be the Secretary to the Disciplinary Committee but shall not vote on any matter before the Disciplinary Committee.

#### 43. Functions of Disciplinary Committee

- (1) The functions of the Disciplinary Committee are to hear and determine—
  - (a) any complaint referred to the Disciplinary Committee by a Professional Conduct Committee against a member;
  - (b) a disciplinary action initiated against a member under [section 36\(2\)](#); or
  - (c) a complaint or allegation against the Marketers' Registration Committee.
- (2) The Disciplinary Committee may publicise as the Disciplinary Committee considers appropriate, the facts relating to a marketer who is found guilty of, and punished for, professional misconduct.

#### 44. Proceedings of Disciplinary Committee

- (1) Subject to the other provisions of this Act, the Disciplinary Committee may regulate its own procedure.
- (2) Five members of the Disciplinary Committee shall form a quorum at a meeting or sitting of the Disciplinary Committee.
- (3) The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson shall preside at a meeting or sitting of the Disciplinary Committee.
- (4) A question at a meeting or sitting of the Disciplinary Committee shall be decided by a majority of the members present at the meeting or sitting of the Disciplinary Committee and in the event of an equality of votes, the person presiding at the meeting or sitting shall have a casting vote in addition to that person's deliberative vote.
- (5) The proceedings of the Disciplinary Committee shall be *in camera*.
- (6) A party to a hearing of the Disciplinary Committee may appear in person or be represented by a legal practitioner or, if the party so elects, by any other person.
- (7) A decision of the Disciplinary Committee shall be in the form of a reasoned judgment and a copy of the judgment shall be supplied to each party to the proceedings and to every person affected by the decision.
- (8) A person who is present at a meeting or sitting of the Disciplinary Committee, at which a matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity, shall, as soon as is practicable after the commencement of the meeting or sitting, disclose that interest and shall not, unless the Disciplinary Committee otherwise directs, take part in any consideration or discussion of, or vote on, a question relating to that matter.
- (9) A disclosure of interest made under this section shall be recorded in the minutes of the meeting or sitting at which it is made.
- (10) The Disciplinary Committee shall cause to be kept a record of its proceedings.

#### 45. Powers of Disciplinary Committee

- (1) The Disciplinary Committee may, for the purposes of a hearing, hear and receive evidence and may—
  - (a) under the hand of the Chairperson or the Registrar, summon witnesses and require the production of a book, record, document, electronic record or anything required for the purposes of the proceeding; and
  - (b) through the Chairperson or Vice-Chairperson, administer an oath to a witness.

- (2) A person summoned to attend before the Disciplinary Committee shall not—
  - (a) refuse or fail to attend at the time and place specified in the summons or, having attended, leave without the permission of the Disciplinary Committee;
  - (b) having attended, refuse to be sworn or to affirm;
  - (c) refuse, without lawful excuse, to answer fully and satisfactorily to the best of that person's knowledge and belief, a question lawfully put to that person; or
  - (d) refuse to produce a book, record, document or thing which that person has been required by summons to produce.
- (3) A person who contravenes subsection (2) commits an offence and is liable, on conviction, for that refusal or failure, to a fine not exceeding two hundred thousand penalty units.
- (4) Despite subsection (2), a person shall not be compelled to answer any question or produce any book, record or document which that person would not be compelled to answer or produce on the trial of an action in the High Court.
- (5) A hearing before the Disciplinary Committee shall, for the purposes of Chapter XI of the Penal Code, be deemed to be a judicial proceeding.  
*[Cap. 87]*
- (6) A finding of fact which is shown to have been made by a court in the Republic shall, in any hearing before the Disciplinary Committee, be conclusive evidence of the fact so found.
- (7) The Disciplinary Committee shall, where the Disciplinary Committee has reasonable cause to believe that a marketer is legally disqualified, refer the matter for determination in accordance with the Mental Health Act, 2019.  
*[Act No. 6 of 2019]*
- (8) The Disciplinary Committee shall, where a determination is made in accordance with the Mental Health Act, 2019, that a marketer is legally disqualified, suspend the practising certificate of the marketer.  
*[Act No. 6 of 2019]*
- (9) The Disciplinary Committee shall, where the Disciplinary Committee finds, after due inquiry, that a marketer is not guilty of professional misconduct, record a finding that the marketer is not guilty of the conduct to which the charge relates and dismiss the charge.
- (10) The Disciplinary Committee may, for the purpose of any proceedings, use assessors or experts as the Disciplinary Committee considers necessary.

#### **46. Sanctions for professional misconduct by Disciplinary Committee**

The Disciplinary Committee shall, where the Disciplinary Committee finds a marketer guilty of professional misconduct, after due inquiry, impose one or more of the following penalties:

- (a) order the cancellation of the marketer's practising certificate or certificate of registration;
- (b) order the suspension of the certificate of registration or practising certificate for a specified period and on conditions as determined by the Disciplinary Committee;
- (c) censure the marketer;
- (d) caution the marketer;
- (e) impose an administrative penalty, not exceeding one hundred thousand penalty units, to be paid to the Institute;

- (f) order that the marketer be re-trained or rehabilitated;
- (g) order the marketer to pay to the Institute or a party to the hearing the costs of, or incidental to, the proceedings; or
- (h) order the marketer to pay any party to the hearing or any other person, as restitution, the amount of loss caused by that person's negligence.

#### 47. Reports by Disciplinary Committee

The Disciplinary Committee shall, within seven days from the completion of a hearing, submit to the Council a report of the proceedings together with a copy of the record.

#### 48. Rules relating to disciplinary proceedings

- (1) The Chief Justice may, by statutory instrument make Rules relating to the—
  - (a) manner and form for lodging of complaints under this Part;
  - (b) mode of summoning persons before the Disciplinary Committee;
  - (c) manner and form of service of a summons requiring the attendance of a witness before the Disciplinary Committee and the production of a book, record, document or thing;
  - (d) procedure to be followed and rules of evidence to be observed in proceedings before the Disciplinary committee; and
  - (e) functions of assessors and experts to the Disciplinary Committee.
- (2) Rules made under subsection (1) may provide—
  - (a) that before a matter is referred to the Disciplinary Committee the matter shall, in a manner that may be provided by the Rules, have been brought before a Professional Conduct Committee, and investigated by the Institute;
  - (b) for securing notices for the proceedings and specifying the time and manner of the proceedings; and
  - (c) for securing that a party to the proceedings shall, if that person requires, be entitled to be heard by the Disciplinary Committee.

### Part VI – Inspectorate

#### 49. Inspectors

- (1) The Council shall appoint suitably qualified persons as inspectors to ensure compliance with this Act.
- (2) The Council shall provide an inspector with an identification card which shall be *prima facie* evidence of the inspector's appointment as inspector.
- (3) An inspector shall, in performing a function under this Act—
  - (a) be in possession of the identification card referred to in subsection (2); and
  - (b) show the identification card to a person who requests to see the identification card, or is the subject of an investigation under this Act.

## 50. Power of entry, search and inspection

- (1) An inspector may, for the purpose of enforcing the provisions of this Act, at any reasonable time, without prior notice, and on the authority of a warrant, enter any premises that the inspector has reasonable grounds to believe is used for the commission of an offence or contrary to the provisions of this Act, and—
  - (a) search the premises;
  - (b) search any person on the premises if the inspector has reasonable grounds to believe that the person has possession of an article, document or record that has a bearing on an inspection or investigation, except that a person shall only be searched by a person of the same sex;
  - (c) take extracts from, or make copies of, any book, document or record that is on the premises and that has a bearing on an inspection or investigation;
  - (d) demand the production of, and inspect, relevant certificates; and
  - (e) make such inquiries that may be necessary to ascertain whether the provisions of this Act or any other law on which an inspection or investigation is based, have been complied with.
- (2) A court may issue a warrant on application by an inspector if it appears from written information given by that inspector, on oath or affirmation, that there are reasonable grounds to believe that this Act has been or is likely to be contravened.
- (3) An inspector who removes anything from any premises shall—
  - (a) issue a receipt for anything removed to the owner or the person in control of the premises; and
  - (b) return anything removed as soon as practicable after the thing removed has served the purpose for which it was removed.
- (4) A person commits an offence if that person—
  - (a) delays or obstructs an inspector in the performance of the inspector's functions under this Act;
  - (b) refuses to give an inspector reasonable assistance as the inspector may require for the purpose of performing the inspector's functions;
  - (c) impersonates an inspector or presents oneself to be an inspector; or
  - (d) wilfully gives an inspector false or misleading information in answer to an inquiry made by the inspector.
- (5) A person convicted of an offence under subsection (4) is liable to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.
- (6) An inspector shall furnish the Council with a written report and any other information relating to an inspection.

## Part VII – General provisions

### 51. Branches of Institute

- (1) There shall be branches of the Institute that the Council may approve according to the number of members in a particular geographical area.
- (2) Subject to the general directions of the Council, a branch may regulate its own procedure.



- (3) The management and control of each branch shall be vested in an executive committee, consisting of marketers, that are elected annually by that branch.
- (4) The executive committee of the branch shall be responsible for all matters affecting the branch including the receipt and expenditure of moneys relating to its activities other than membership subscriptions.
- (5) A branch may be dissolved with the prior approval of the Council.

## 52. Professional fees

A practising marketer shall, for professional services rendered, charge fees that the Council may, with the approval of the Minister, by statutory instrument, prescribe.

## 53. False or misleading statement

- (1) A person shall not knowingly or recklessly make a false or misleading statement, orally or in writing, to the Institute, Professional Conduct Committee or Disciplinary Committee with the intention that it be acted on by the Institute, Professional Conduct Committee or Disciplinary Committee.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

## 54. Appeals

- (1) A person aggrieved with a decision of the Institute may, within thirty days of receipt of the decision, appeal to the Minister.
- (2) A person aggrieved with a decision of the Minister may appeal to the High Court.
- (3) A person aggrieved with a decision of the Disciplinary Committee may appeal to the High Court.
- (4) A decision of the Disciplinary Committee shall not take effect until the expiration of the time for lodging an appeal against the decision or, if an appeal is lodged, until the time the appeal is disposed of, withdrawn or struck out for want of prosecution.
- (5) The proceedings of the Disciplinary Committee shall not be set aside by reason only of some irregularity in those proceedings if that irregularity did not occasion a substantial miscarriage of justice.

## 55. Jurisdiction over acts committed outside Republic

- (1) A court shall have jurisdiction over a marketer for an act committed outside the Republic which, if it had been committed in the Republic, would have been an offence of professional misconduct under this Act.
- (2) Any proceedings against a marketer under this section which would be a bar to subsequent proceedings against that marketer, for the same offence, if the offence had been committed in the Republic, shall be a bar to further proceedings against the marketer under any written law relating to the extradition of persons, in respect of the same offence outside the Republic.
- (3) The Mutual Legal Assistance in Criminal Matters Act applies to proceedings under this Act.

*[Cap. 98]*

## 56. Offences by principal officers of body corporate or unincorporate body

Where an offence under this Act is committed by a body corporate or an unincorporate body, with the knowledge, consent or connivance of the director, manager, shareholder or partner of the body corporate or an unincorporate body, that director, manager, shareholder or partner commits an offence and is liable, on conviction, to the penalty specified for that offence under this Act.

## 57. Administrative penalty

- (1) The Institute may impose an administrative penalty on a person for a failure to comply with a provision of this Act which is not an offence.
- (2) An administrative penalty shall not exceed the amount prescribed by the Minister by statutory instrument for each day during which the failure continues.
- (3) An administrative penalty shall be paid to the Institute within the period prescribed by the Minister.
- (4) If a person fails to pay an administrative penalty within the stipulated time under subsection (3), the Institute may, by way of civil action in a competent court, recover the amount of the administrative penalty from that person as an amount due and owing to the Institute.

## 58. Guidelines

- (1) The Institute may, in the exercise of its functions under this Act, issue guidelines as are necessary for the better carrying out of the provisions of this Act.
- (2) The Institute shall publish the guidelines issued under this Act in a daily newspaper of general circulation in the Republic and in the *Gazette*, and the guidelines shall take effect on the date of publication.
- (3) The guidelines issued by the Institute under this Act shall bind the persons regulated under this Act.

## 59. Regulations

- (1) The Minister may, on the recommendation of the Institute, by statutory instrument, make Regulations for the better carrying out of the provisions of this Act.
- (2) Despite the generality of subsection (1), Regulations under subsection (1) may make provision for the—
  - (a) manner and form of applications under this Act and the fees payable;
  - (b) the form of the certificate of registration and the conditions under which the certificate of registration is issued;
  - (c) the qualifications for registration of a marketer;
  - (d) the form of the practising certificate and the requirements a marketer should meet for the issuance of a practising certificate;
  - (e) the standards of advertising in marketing;
  - (f) the code of ethics to which marketers shall subscribe;
  - (g) the continuous professional development for marketers; and
  - (h) the fees payable for professional services and any other fees which are required to be prescribed.

**60. Repeal of Act No. 14 of 2003**

- (1) The Zambia Institute of Marketing Act, 2003, is repealed.
- (2) Despite subsection (1), the provisions of the Second Schedule apply in respect of the matters specified in the Second Schedule.

**First Schedule (Sections 3(2) and 8(5))****The Zambia Institute of Marketing****Part I – Administration of the Institute****1. Seal of Institute**

- (1) The seal of the Institute shall be a device that may be determined by the Council and shall be kept by the Registrar.
- (2) The affixing of the seal shall be authenticated by the President or the Vice-President and the Registrar or any other person authorised in that behalf by a resolution of the Council.
- (3) A 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 Institute by the Registrar or any other person generally or specifically authorized by the Council in that behalf.
- (4) A document purporting to be a document under the seal of the Institute or issued on behalf of the Institute shall be received in evidence and shall be deemed to be so executed or issued, without further proof, unless the contrary is proved.

**2. Tenure of office and vacancy**

- (1) A council member shall, subject to the provisions of this Act, hold office for a term of two years and may be re-elected for a further and final term of two years.
- (2) A council member shall, on the expiration of the term for which the member is elected, continue to hold office until another member is elected, but in no case shall an extension of the period exceed three months.
- (3) The office of a council member becomes vacant if the member—
  - (a) dies;
  - (b) is adjudged bankrupt under any written law;
  - (c) is absent from three consecutive meetings of the Council of which the council member had notice, without the prior approval of the Council;
  - (d) resigns, by notice in writing, to the Council;
  - (e) is legally disqualified from performing the functions of a council member;
  - (f) is found guilty of professional misconduct;
  - (g) is deregistered under this Act; or
  - (h) is convicted of an offence under this Act or any other written law and sentenced to a term of imprisonment exceeding six months without the option of a fine.

- (4) The Council shall, where there is a vacancy in the membership of the Council before the expiry of the term of office, cause the election of another person to take place to replace the member who vacates office in accordance with the constitution.

### 3. **Proceedings of Council**

- (1) Subject to the other provision of this Act, the Council may regulate its own procedure.
- (2) The Council shall meet at least once in every three months for the transaction of business at a place and time that the President may determine.
- (3) The President may call a meeting of the Council on giving notice of not less than fourteen days, or where one third of the council members so request, in writing, except that if the urgency of a particular matter does not permit the giving of notice, a special meeting may be called on giving a shorter notice.
- (4) Five council members shall form a quorum a meeting of the Council.
- (5) There shall preside at a meeting of the Council—
  - (a) the President;
  - (b) in the absence of the President, the Vice-President in accordance with the constitution; or
  - (c) in the absence of both the President and Vice-President, another council member that the council members present shall elect for the purpose of that meeting.
- (6) A decision of the Council on any question shall be by a majority of the council members present and voting at the meeting, and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.
- (7) The Council may invite a person whose presence is, in its opinion, desirable to attend and participate in the deliberations of the meeting, but that person shall have no vote.
- (8) The validity of any proceedings, act or decision of the Council shall not be affected by a vacancy in the membership of the Council or any defect in the appointment of a council member or by reason that a person not entitled to do so took part in the proceedings.
- (9) The Council shall cause minutes to be kept of the proceedings of every meeting of the Council and any committee established by the Council.

### 4. **Committees**

- (1) The Council may, for the purpose of performing its functions under this Act, constitute a committee and delegate any of its functions to the committee as it considers necessary.
- (2) The Council may appoint as members of a committee under sub-paragraph (1), persons who are or are not council members except that at least one council member shall be a member of a committee.
- (3) A member of a committee shall hold office for a period that the Council may determine.
- (4) Subject to any specific or general direction of the Council, a committee may regulate its own procedure.

### 5. **Allowances**

The Council shall pay to a council member, a member of the committee of the Council, a board member, a member of a Professional Conduct Committee or a member of the Disciplinary Committee an allowance as the Council may determine.

### 6. **Disclosure of interest**

- (1) A council member or board member who is present at a meeting of the Council or Board, respectively, or a member who is present at a meeting of a committee of the Council at which any

matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity, shall, as soon as is practicable after the commencement of the meeting, disclose the interest and shall not, unless the Council, Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.

- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

#### 7. **Prohibition of publication or disclosure of information to unauthorised persons**

- (1) A person shall not, without the consent in writing given by, or on behalf of, the Institute, publish or disclose to person, other than in the course of duties of that person, the contents of a document, communication or information which relates to, or which has come to the knowledge of that person in the course of that person's duties under this Act.
- (2) A person who contravenes sub-paragraph (1) commits an offence and is liable, on conviction to a fine not exceeding two hundred thousand penalty units, or to imprisonment for a term not exceeding two years, or to both.
- (3) A person who, having information which to that person's knowledge has been published or disclosed in contravention of sub-paragraph (1), unlawfully publishes or communicates the information to another person, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

#### 8. **Immunity**

An action or other proceeding shall not lie or be instituted against a council member, a member of a committee of the Council, a board member, a member of a Professional Conduct Committee, a member of the Disciplinary Committee or a member of staff of the Institute for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance of a power or function conferred under this Act.

## **Part II – Financial provisions**

#### 9. **Funds of Institute**

- (1) The funds of the Institute consist of monies that may—
  - (a) be paid to the Institute by way of fees, charges, grants or donations; and
  - (b) otherwise vest in, or accrue to, the Institute.
- (2) The Institute may—
  - (a) accept monies by way of grants or donations from any source in or outside the Republic;
  - (b) raise by way of loans or otherwise, monies that the Institute may require for the performance of the Institute's functions; and
  - (c) in accordance with the Regulations made under this Act, charge and collect fees for services provided by the Institute.
- (3) There shall be paid from the funds of the Institute—
  - (a) salaries, allowances and loans of staff of the Institute;
  - (b) reasonable travelling, transport and subsistence allowances for council members, members of a committee of the Institute, board members, members of a Professional Conduct Committee and members of the Disciplinary Committee when engaged in the business of the Institute and at such rates as the Council may determine; and

- (c) any other expenses incurred by the Institute in the performance of its functions under this Act.
  - (4) The Institute may invest in a manner as the Institute considers appropriate funds of the Institute that the Institute does not immediately require for the performance of its functions.
10. **Financial year**
- The financial year of the Institute shall be a period of twelve months ending on 31<sup>st</sup> December in each year.
11. **Accounts and audit**
- (1) The Institute shall cause to be kept proper books of account and other records relating to its accounts.
  - (2) The accounts of the Institute shall be audited annually by an independent auditor appointed by the Council.
  - (3) The fees of the independent auditor shall be paid by the Institute
12. **Annual report**
- (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Institute shall submit to the Minister a report concerning the Institute's activities during the financial year.
  - (2) The report referred to in sub-paragraph (1), shall include information on the financial affairs of the Institute and there shall be appended to the report—
    - (a) an audited statement of financial position;
    - (b) an audited statement of comprehensive income; and
    - (c) other information that the Minister may require.
  - (3) The Minister shall not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

## **Second Schedule (Section 60(2))**

### **Savings and transitional provisions**

#### **1. Interpretation**

In this Schedule, "former Council" means the Council of the Zambia Institute of Marketing established under the repealed Act.

#### **2. Registration and appointment under repealed Act**

- (1) A marketer registered under the repealed Act shall continue to be registered as if registered under this Act.
- (2) The registration under sub-paragraph (1) shall be modified in accordance with this Act where necessary.
- (3) After the commencement of this Act, the former Council shall continue to perform the functions of the Council of the Institute under this Act until a new Council is constituted in accordance with this Act.
- (4) A register maintained under the repealed Act and subsisting immediately before the commencement of this Act shall, until replaced, be considered to be a register maintained under this Act.

### 3. Staff of Institute

- (1) For the avoidance of doubt, a person who, before the commencement of this Act was an officer or employee of the former Council shall continue to be an officer or employee of the Institute, as if appointed or employed under this Act.
- (2) The service of persons under subparagraph (1) shall be treated as continuous service.
- (3) Nothing in this Act affects the rights and liabilities of a person employed or appointed by the former Council before the commencement of this Act.

### 4. Transfer of assets and liabilities

- (1) On the commencement of this Act, there shall be transferred to, vest in and subsist against the Institute by virtue of this Act and without further assurance, the assets, rights, liabilities and obligations which immediately before the commencement of this Act were the assets, rights, liabilities and obligations of the former Council.
  - (2) Subject to subparagraph (1), every deed, bond or agreement, other than an agreement for personnel service, to which the former Council was a party immediately before the commencement of this Act, whether or not of a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if—
    - (a) the Institute had been party to it;
    - (b) for any reference to the former Council there was substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Institute; or
    - (c) for any reference to any officer of the former Council, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to that officer of the Institute, as the Institute shall designate.
  - (3) Where under this Act, any assets, rights, liabilities and obligations of the former Council are deemed to be transferred to the Institute, in respect of which transfer a written law provides for registration, the Institute shall make an application, in writing, to the appropriate registration authority for registration of the transfer.
  - (4) The registration authority, under subparagraph (3), shall make entries in the appropriate register that shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.
5. (1) Any legal proceedings or application of the former Council pending immediately before the commencement of this Act by or against the former Council may be continued by or against the Institute.
- (2) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the former Council may be instituted by or against the Institute.