

FIJI INSTITUTE OF CHARTERED ACCOUNTANTS BILL 2021
(BILL NO. 35 OF 2021)

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BILL NO. 35 OF 2021**A BILL**

FOR AN ACT TO CONTINUE THE FIJI INSTITUTE OF ACCOUNTANTS AS THE FIJI INSTITUTE OF CHARTERED ACCOUNTANTS, PROVIDE FOR THE REGISTRATION OF CHARTERED ACCOUNTANTS, REGULATION OF THE PRACTICE OF ACCOUNTANCY AND FOR RELATED MATTERS

PART 1—PRELIMINARY*Short title and commencement*

- 1.**—(1) This Act may be cited as the Fiji Institute of Chartered Accountants Act 2021.
(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

- 2.** In this Act, unless the context otherwise requires—

“Accounting Technician” means a person who has satisfied the requirements for registration as an Accounting Technician under this Act;
“Appeal Committee” means the Appeal Committee appointed under section 34;
“Assessment Committee” means the Assessment Committee constituted under section 29;

“Associate Accountant” means a person who has satisfied the requirements for registration as an Associate Accountant under this Act;

“association of accountants” means any institute, society, association or other body of accountants recognised as such by the Institute;

“Certificate of Limited Public Practice” means a certificate issued by the Council in accordance with the rules of the Institute authorising the person named in the certificate to offer his or her services as an accountant to the public excluding the provision of external auditing services;

“Certificate of Public Practice” means a certificate issued by the Council in accordance with the rules of the Institute authorising the person named in the certificate to offer his or her services as an accountant to the public;

“Chartered Accountant” means a person who has satisfied the requirements for registration as a Chartered Accountant under this Act;

“Chartered Accountant in Limited Public Practice” means a chartered accountant who is the holder of a Certificate in Limited Public Practice;

“Chartered Accountant in Public Practice” means a Chartered Accountant who is the holder of a Certificate of Public Practice;

“committee” means any committee established under this Act or any subsidiary legislation made under this Act;

“Council” means the Council of the Institute continued under section 8;

“Disciplinary Panel” means the disciplinary panel appointed under section 30;

“Executive Director” means the executive director appointed under section 15;

“holding out”, in relation to—

(a) the provision of accounting services; or

(b) a person holding himself or herself out as a member or as having attained the qualifications or entitlements provided for under this Act,

includes the advertisement of any such membership, qualification, entitlement or accounting services;

“Institute” means the Fiji Institute of Accountants continued under section 4 as the Fiji Institute of Chartered Accountants;

“member” means a member of the Institute who is registered under this Act;

“Minister” means the Minister responsible for finance; and

“Register” means the register of members.

Objectives

3. The objectives of this Act are to—

- (a) continue the Fiji Institute of Accountants established under the Fiji Institute of Accountants Act 1971 as the Fiji Institute of Chartered Accountants;
- (b) provide for the registration of accountants; and
- (c) regulate the practice of accountancy in Fiji.

PART 2—FIJI INSTITUTE OF CHARTERED ACCOUNTANTS

Fiji Institute of Chartered Accountants

4.—(1) The Fiji Institute of Accountants established under the Fiji Institute of Accountants Act 1971 continues in existence under this Act as the “Fiji Institute of Chartered Accountants”.

(2) The Institute is a body corporate with perpetual succession and a common seal and may—

- (a) enter into contracts;
- (b) sue and be sued;
- (c) acquire and dispose of property, both real and personal; and
- (d) perform such other acts that bodies corporate may by law perform.

Functions of the Institute

5. The Institute has the following functions—

- (a) determine the requirements and qualifications of persons for registration under this Act;
- (b) register accountants for membership and regulate the practice of accountancy in Fiji;
- (c) promote and safeguard the rights and interests of its members in all matters affecting the profession;
- (d) uphold, encourage and enforce amongst its members a high standard of efficiency and professional conduct in the best interests of the profession and the public;
- (e) facilitate and supervise the training, education and examination by the Institute or any other body of persons, of persons desiring to acquire a basic training in general accounting knowledge and of persons practising or intending to practise in Fiji or elsewhere; and
- (f) promote, in any manner which the Institute deems fit, the interests of the profession in Fiji.

Powers of the Institute

6. The Institute has the following powers, subject to the Council's approval—

- (a) purchase or lease any land required for any of its functions or the objectives of this Act;
- (b) take up and subscribe for or otherwise acquire shares in any company, if membership of the company is essential or advantageous to the Institute in connection with the acquiring and holding of any lease or tenancy from the company of land required for any of its functions or the objectives of this Act;
- (c) except in the case of leases from month to month, sell, surrender, lease, exchange or mortgage any land or building vested in it either in blocks or in parcels as may be found most convenient or advantageous;
- (d) borrow money, whether by way of a bank overdraft or otherwise, for any of its functions or the objectives of this Act;
- (e) borrow or raise money by bank overdraft or otherwise by the issue of debentures or any other securities founded or based on all or any of the property and rights of the Institute or without any such security and on such terms as to priority or otherwise as the Council deems fit; and
- (f) do all things necessary in carrying out any of its functions or the objectives of this Act.

Members of the Institute

7. The Institute consists of such persons registered as members in accordance with this Act.

PART 3—COUNCIL

Council

8.—(1) The Council consists of the following persons **who must be chartered accountants under this Act and** elected by voting members of the Institute—

- (a) 3 members who hold a Certificate of Public Practice;
- (b) 3 members who do not hold a Certificate of Public Practice; and
- (c) 3 members irrespective of whether they hold or do not hold a Certificate of Public Practice.

(2) At an annual general meeting, a member in each of the categories in subsection (1) is to retire and may be eligible for re-election for a maximum of 3 terms.

(3) Subject to this section, the Institute must, at an annual general meeting, elect one member from each of the categories in subsection (1) for a term of 3 years.

(4) The members of the Council who are to retire in accordance with subsection (2) are those who have held office for the longest period.

(5) The Council may decide which member or members are to retire, by lot, for members who have held office for the same period.

(6) A member of the Council may be removed from office before the expiration of his or her term, at a meeting by a resolution passed by two-thirds of those present and entitled to vote, provided that no such resolution may be moved unless 14 days' written notice of such intention is given before the meeting to the member of the Council concerned.

President and vice president

9.—(1) The president and the vice president of the Institute must be elected by the Council from amongst its members and in the event of a vacancy in respect of either position, the Council must, as soon as practicable, convene a meeting to elect a member of the Council to fill such vacancy for the remainder of the term.

(2) The president of the Institute is the chairperson of the Council, and in his or her absence, the vice president of the Institute must preside at meetings of the Council.

(3) In the absence of both the president and vice president of the Institute at a meeting of the Council, the members of the Council present must then elect a member from amongst themselves to preside at the meeting.

(4) The term of office for the president and the vice president of the Institute is one year and the person is eligible for re-election for only one additional year in office.

Vacation of office

10.—(1) A member of the Council vacates his or her office if—

- (a) he or she ceases to be qualified to hold office in or to be elected or appointed to the Council;
- (b) he or she resigns from the Council;
- (c) he or she is absent at more than 3 meetings of the Council within a period of 12 months;
- (d) he or she is insolvent or is declared bankrupt or enters into a composition with any creditor or takes or attempts to take the benefit of the provisions of any written law to liquidate his or her assets or affairs;
- (e) he or she is of unsound mind;
- (f) his or her subscription to the Institute is in arrears for the period specified under section 24(3); or
- (g) he or she is removed from office following a resolution passed at a meeting under section 8(6).

(2) Any vacancy that arises amongst the elected members of the Council before an annual general meeting may be filled by the Council by appointment from amongst the category of membership of the person giving rise to such vacancy, and the new member may fill such vacancy for the remainder of the term.

Council may act notwithstanding vacancy

11. The Council may act notwithstanding any vacancy in its membership, provided that not less than 5 of its members are in office.

Functions of the Council

12. The Council has the following functions—

- (a) grant or award prizes or scholarships, hold exhibitions and establish and subsidise lectureships in universities and other educational institutions in subjects of study that relate to accountancy or to the duties of an accountant;
- (b) appoint officers, clerks and agents for permanent, temporary or special services as it deems fit and to determine their duties and terms of service;
- (c) appoint the bankers and legal advisors of the Institute;
- (d) rent or otherwise acquire and furnish suitable premises for use by the Institute;
- (e) take cognisance of anything affecting the Institute or the professional conduct of its members and to bring before any meeting of the Institute any matter which it considers material to the Institute or to the interests of the profession and make any recommendation and take such action as it deems fit;
- (f) communicate with other similar bodies and with members of the profession for the purpose of obtaining and communicating information that may be beneficial or of interest to members and to negotiate and arrange with the bodies for the reciprocal recognition of the status of the members of the Institute;
- (g) make and give receipts, releases and other discharges for moneys payable to, and for claims and demands of, the Institute; and
- (h) appoint committees of the Institute for such purposes and with such powers as it deems fit.

Powers of the Council

13.—(1) The Council has the power to do all things necessary or convenient in connection with the effective management and control of the Institute.

(2) Without limiting subsection (1) and in conjunction with the rules of the Institute, the Council has the power to—

- (a) make rules, that must be sent to each member of the Institute, to provide for all matters not expressly reserved to the Institute in a meeting, whether the same be expressed amongst its powers or not, including the control of branches and the powers exercisable by them;
- (b) determine the conditions for applicants for registration as members of the Institute;

- (c) determine the practical experience requirements for registration as members of the Institute;
- (d) institute, conduct, defend, compound or abandon any legal proceedings by or against the Institute, as applicable, or its officers or otherwise concerning the affairs of the Institute and to compound and allow time for payment or satisfaction of any debt due or of any claim or demand made by or against the Institute;
- (e) refer any claim or demand by or against the Institute to arbitration and to observe and perform every award made as a result of such arbitration where the parties agree;
- (f) invest and deal with any moneys of the Institute, in securities authorised for the investment of trust funds by any written law or in such other securities the Council may consider to be prudent and secure investments with reputable financial institutions;
- (g) establish branches of the Institute as it deems fit;
- (h) delegate any of its powers, authorities and discretions to any branch of the Institute on such conditions and for such period as it deems fit;
- (i) accept by way of grant, gift, testamentary disposition or otherwise, property or moneys in aid of the finances of the Institute on such conditions as it may determine, which must be recorded in a register and in the case of a donation made for a specific purpose, the donation must be used for that specific purpose; and
- (j) exercise such powers, privileges and discretions as are not by this Act expressly and exclusively required to be exercised by the members of the Institute at a meeting.

Meetings of the Council

14.—(1) The Council must meet at such time and place and as often as may be necessary.

(2) A meeting of the Council may be held through any means approved by a majority of the members of the Council.

(3) The quorum of a meeting of the Council is 5.

(4) A majority decision of the members of the Council participating and voting at any meeting of the Council is deemed to be a decision of the Council.

(5) The chairperson has an original and a casting vote.

(6) Subject to this Act, the Council may regulate its own meeting procedures through any rules of the Institute.

Appointment and functions of Executive Director

15.—(1) The Council appoints an Executive Director and such other officers as necessary and must pay to any such person appointed such remuneration as the Council deems fit.

(2) The Executive Director is the secretary of the Institute and of the Council.

(3) The Executive Director may exercise and discharge the powers, authorities, duties and functions conferred or imposed on him or her by this Act or any subsidiary legislation made under this Act.

PART 4—REGISTRATION OF MEMBERS

Register of members

16.—(1) The Council must keep a register of members under the following categories—

- (a) Chartered Accountants;
- (b) Associate Accountants; and
- (c) Accounting Technicians.

(2) The Register must be—

- (a) kept at the office of the Institute; and
- (b) made available for inspection by the public at all reasonable hours without charge.

(3) The Council must publish a list of registered accountants on the Register in the Gazette on or before 31 July of each year.

Application

17.—(1) A person applying for membership to the Institute must submit—

- (a) a written application to the Council in the approved form;
- (b) a statutory declaration verifying the contents of the application; and
- (c) the approved fee.

(2) Where an application is approved **by the Council**, the Council must register the person on the Register.

Membership

18.—(1) A person must not be registered as a member if, in the opinion of the Council, the person is not of good character or reputation or is engaged in any business or occupation inconsistent with the integrity of the Institute.

(2) A body corporate is not eligible for registration as a member of the Institute.

(3) Subject to subsections (1) and (2), a person is eligible to be registered as a member of the Institute if the person—

- (a) is resident, or can provide evidence that the person is intending to reside, in Fiji or a Pacific island listed under the rules of the Institute;

- (b) has obtained the qualifications in accountancy or any other related subject area, or its equivalent, as approved by the Council, for any category listed under section 16(1); and
- (c) has satisfied all approved requirements, if any, relating to practical accounting experience; and
- ~~(d) is in the good standing of an association of accountants.~~

(4) Notwithstanding subsection (3), a person may be eligible to be registered as a member of the Institute if the person is in good standing with an association of accountants.

(45) Notwithstanding subsection (3)(a), a member who no longer resides in Fiji may continue his or her membership of the Institute subject to the rules of the Institute for continued membership.

Chartered Accountants

19.—(1) Subject to section 17, a person who has obtained the required qualifications and practical experience in accountancy may apply to the Council to be registered as a Chartered Accountant.

(2) Upon registration of the person as a Chartered Accountant and for such time that the person is registered, the person is entitled to—

- (a) describe himself or herself as a Chartered Accountant;
- (b) use the abbreviations “CA” after his or her name; and
- (c) if the person is outside of Fiji, the person may use the designation “Chartered Accountant, Fiji” and the abbreviation “CA (Fiji)” after his or her name to indicate his or her qualification.

(3) A Chartered Accountant is entitled to—

- (a) use the premises and library of the Institute at all reasonable hours;
- (b) have sent to him or her all communications distributed by the Institute to its members; and
- (c) attend, speak and vote at any meeting of the Institute.

Associate Accountants

20.—(1) Subject to section 17, a person who has obtained the required qualifications and practical experience in accountancy may apply to the Council to be registered as an Associate Accountant.

(2) Upon registration of the person as an Associate Accountant and for such time that the person is registered, the person is entitled to—

- (a) describe himself or herself as an “Associate Accountant (Fiji)”; and
- (b) use the abbreviation “AA (Fiji)” after his or her name to indicate his or her qualification.

(3) An Associate Accountant has the same rights as a Chartered Accountant except that he or she is not entitled to vote at any meeting of the Institute or to carry out any power conferred or duty imposed on any Chartered Accountant by any written law.

Certificate of Public Practice and Certificate of Limited Public Practice

21. A member must not offer his or her services to the public under the designation of “Chartered Accountant in Public Practice” or “Chartered Accountant in Limited Public Practice” or use the abbreviation “CAPP (Fiji)”, “CPP (Fiji)”, “CALPP (Fiji)” or “CLPP (Fiji)”, as the case may be, unless the member is a holder of a Certificate of Public Practice or a Certificate of Limited Public Practice as applicable issued in accordance with this Act or any subsidiary legislation made under this Act.

Accounting Technicians

22.—(1) A person is eligible to be registered as an Accounting Technician if the person—

- (a) has passed subject units as approved by the Institute;
- (b) complies with such conditions and possesses such other qualifications as may be required; and
- (c) satisfies the Council that he or she is a fit and proper person to be registered.

(2) Upon registration of the person as an Accounting Technician and for such time that the person is registered, the person is entitled to describe himself or herself as an “Accounting Technician, Fiji” and use the abbreviation “AT (Fiji)” after his or her name.

(3) An Accounting Technician is entitled to—

- (a) use the premises and library of the Institute at all reasonable hours;
- (b) have sent to him or her all communications distributed by the Institute to its members; and
- (c) attend and speak at any meeting of the Institute but does not have any voting rights.

Fellows

23.—(1) A registered Chartered Accountant may apply in writing to the Council in the **prescribedapproved** form, accompanied by the **prescribedapproved** fee, to be admitted as a Fellow of the Institute and must satisfy such conditions as **prescribedapproved** by the Council.

(2) Any person who applies to be a Fellow of the Institute must—

- (a) be a resident;
- (b) have paid his or her annual fee for a period of not less than **150** years; and
- (c) have made a significant contribution to the Institute.

(3) Upon admission of the person as a Fellow of the Institute and for such time that the person is a Fellow of the Institute, the person is entitled to—

- (a) describe himself or herself as a “Fellow of the Fiji Institute of Chartered Accountants”; and
- (b) use the abbreviation “FCA (Fiji)” after his or her name to indicate his or her qualification.

Fees payable by members

24.—(1) A member must pay to the Institute on registration and annually or at such other intervals as the Institute may decide, such fees as may be approved.

(2) The Institute may approve different fees for different categories of members.

(3) The Council may remove from the Register the name of any member who is in arrears for 3 months or more in the payment of any fee and, on notice of such removal under the hand of the Executive Director being delivered to that member or posted to his or her registered postal address, he or she ceases to be a member.

(4) Without prejudice to any other provision of this Act, any member who ceases to be a member under subsection (3) may, at any time within 12 months from the date of the notice of removal, pay to the Council all fees which are in arrears or which would have been in arrears if he or she had continued to be a member, together with such penalty as may be fixed by the Council and is eligible to have his or her name restored to the Register and on such restoration, he or she is deemed to be re-admitted as a member.

(5) A person seeking re-admission after a lapse in membership for more than 12 months must ~~to~~ demonstrate to the satisfaction of the Council that he or she has regularly participated in continuing professional education activities and has satisfied the prescribed requirements.

Resignation from the Institute

25.—(1) A member of the Institute may resign by writing and delivering to the Executive Director his or her resignation from the Institute and, unless the Council refuses to accept his or her resignation as provided for in subsection (2), his or her name must be removed from the Register and he or she ceases to be a member.

(2) The Council may refuse to accept the resignation of any member if—

- (a) the Council has reason to believe that the member has been guilty of conduct, or that circumstances exist, to justify the removal of his or her name from the Register;
- (b) is aware that any matter concerning the member is before a Disciplinary Committee or the Assessment Committee for investigation or inquiry;
- (c) the member is indebted to the Institute.

Reinstatement of members

26. A member whose name has been removed from the Register under section 25 may apply at any time for the reinstatement of his or her name in the Register and the name of the member may be reinstated in the Register on such terms and conditions as the Council deems fit.

PART 5—PROFESSIONAL CONDUCT

Regulation of conduct of members

27. The Council may make rules to regulate the conduct of members as it thinks fit.

Complaints against members

28.—(1) Any person who seeks to make a formal complaint against a member that may render the intervention of a disciplinary committee in the interest of the public or the Institute, must make such complaint in the first instance to the Executive Director.

(2) A complaint must be in writing and supported by evidence and such statutory declarations as the Executive Director may require.

(3) Where the Executive Director has received any complaint or where facts are brought to his or her knowledge that satisfy him or her that there may be grounds for the complaint, it is the duty of the Executive Director to lay the complaint or facts with evidence, as the case may be, before the Assessment Committee which must then investigate the matter and determine whether or not it is to be referred to a disciplinary committee.

(4) Before any investigation begins in respect of any matter—

(a) the Executive Director must post, deliver or **electronically** e-mail to the member concerned—

(i) a copy of the written complaint and all statutory declarations that have been made in support of the complaint; and

(ii) a notice setting out any further particulars that may be necessary to disclose the reason for the investigation and inviting the member concerned to provide to the Executive Director any written explanation he or she may offer in response to the complaint, within a specified time stated in the notice; and

(b) the Assessment Committee may allow the time specified in the notice to lapse and give due consideration to any explanation that the member concerned may make, provided that, with the consent of the member, the time allowed may be reduced.

(5) If the member to whom notice has been given does not provide a written explanation within the period specified in the notice without giving reasonable excuse, the Assessment Committee may consider and determine whether the complaint is to be referred to a disciplinary committee in the absence of any explanation from the member concerned.

Assessment Committee

29.—(1) There is to be an Assessment Committee of the Institute consisting of—

(a) 3 members of the Council, one of whom is to be appointed as chairperson by the Council;

(b) 2 non-Council members from the Disciplinary Panel.

(2) The quorum for any meeting of the Assessment Committee is 3.

(3) The Assessment Committee is responsible for the examination and assessment of any written complaint referred to it by the Executive Director which has been lodged against any member of the Institute and the written responses, if any, that have been received from the member against whom the complaints have been lodged.

(4) If the Assessment Committee is of the opinion that there is no *prima facie* case made against the member concerned, the Committee must dismiss the complaint and the Executive Director must inform the parties concerned.

(5) If the Assessment Committee is of the opinion that the complaint must be referred to a disciplinary committee, it is the duty of the chairperson of the Assessment Committee, without undue delay, to refer the matter to the Council for the appointment of a disciplinary committee.

(6) The Assessment Committee may regulate its own procedure as it deems fit provided that such procedures are not inconsistent with this Act and any subsidiary legislation made under this Act.

Disciplinary Panel

30.—(1) There is to be a Disciplinary Panel consisting of not less than 20 members, appointed by the Council where—

- (a) 10 are Chartered Accountant members of the Institute who have been members for not less than 5 years **and is not a Council member**; and
- (b) 10 who are neither members of the Institute or employed in the accounting profession.

(2) A member of the Disciplinary Panel appointed under subsection (1) is appointed for a term of 2 years and is eligible for reappointment.

(3) A member of the Disciplinary Panel may resign from office by written notice to the Executive Director at any time.

(4) A member of the Disciplinary Panel may be removed from office at any time by the Council **provided a resolution for removal has been voted on and passed by at least 75 per cent of the Council**.

(5) Where the term of a member of the Disciplinary Panel has expired, the member must continue to hold office, except in the event of retirement or vacation of office, until his or her successor assumes office in that member's place.

Disciplinary committees

31.—(1) The Council may appoint from amongst the members of the Disciplinary Panel a committee to deal with any complaint against a member of the Institute referred by the Assessment Committee.

(2) A committee appointed under subsection (1) is called a disciplinary committee and comprises—

- (a) a member of the Disciplinary Panel appointed under section 30(1)(a) as the chairperson; and
- (b) 4 other members of the Disciplinary Panel, 2 being members appointed under section 30(1)(a) and the other 2 being members appointed under section 30(1)(b).

(3) The quorum for any meeting of a disciplinary committee is 3 and must include at least ~~one 2~~ members ~~appointed~~ under subsection (2) ~~(a) and (b)~~ appointed under section 30(1)(b).

(4) A disciplinary committee has the following functions—

- (a) to inquire into any complaint referred to it of malpractice, professional misconduct or unprofessional conduct on the part of a member; and
- (b) to make or cause to be made any investigation it considers necessary for the purpose of its hearings.

(5) A disciplinary committee must meet at the times and places it determines and, subject to subsection (6), must conduct its business according to the rules of the Institute or, if no such rules are prescribed, as it deems fit.

(6) A disciplinary committee is not bound by formal rules of evidence, but must act fairly and give the member in respect of whom a complaint is made or an inquiry is called an opportunity to be heard and to make written submissions.

(7) A member of a disciplinary committee must in the exercise of his or her duties, have the same protection and immunity as a Judge of the High Court.

Powers of disciplinary committee

32.—(1) A member may be found guilty by a disciplinary committee of—

- (a) impropriety;
- (b) unsatisfactory professional conduct;
- (c) professional misconduct;
- (d) gross carelessness;
- (e) gross ~~neglect~~ negligence;
- (f) gross incapability in the performance of his or her professional duties; or
- (g) any act or omission that is discreditable to an accountant.

(2) A disciplinary committee may, if it deems fit, and after due inquiry has been made, exercise in respect of such member any of the following disciplinary powers—

- (a) subject to subsection (4), remove the name of a member from the Register;

- (b) subject to subsection (4), by writing under the hand of its chairperson, suspend a member for any period not exceeding 5 years;
- (c) by writing under the hand of its chairperson, impose on a member a penalty fine not exceeding \$5,000;
- (d) by writing under the hand of its chairperson, reprimand a member; and
- (e) by writing under the hand of its chairperson, order a member to pay to the Institute such sum as it deems fit in respect of costs and expenses of and incidental to, any inquiry held by the disciplinary committee and any investigation held by the Assessment Committee.

(3) A disciplinary committee may refer a matter to the appropriate enforcement agency once the disciplinary committee has carried out due inquiry and has exercised any of its powers under subsection (2).

(34) No such penalty may be imposed in subsection (2)(c) in any case where a disciplinary committee is inquiring into any act or omission which constitutes an offence under any written law for which such member has been convicted by any court and which is punishable by imprisonment or fine.

(45) The name of a member must not be removed from the Register under subsection (2)(a) and no member may be suspended from membership under subsection (2)(b) by reason of any offence committed before the date of his or her registration if, at that date, the Council was aware of his or her conviction in respect of that offence.

(56) For the purposes of this section, “professional misconduct” or “unsatisfactory professional conduct” includes—

- (a) any conduct in contravention of this Act or any subsidiary legislation made under this Act;
- (b) substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence;
- (c) performing work for which the member is not professionally qualified;
- (d) charging costs or fees for work not carried out under a letter of engagement or for incomplete work;
- (e) conduct in becoming, either in Fiji or elsewhere, a bankrupt who has not obtained his or her order of discharge or whose order of discharge is suspended for a term not yet expired or is subject to conditions yet to be fulfilled;
- (f) assigning the whole of his or her estate for the benefit of his or her creditors or, under the order of any court, placing substantially the whole of his or her estate in the hands of an assignee or trustee for the benefit of his or her creditors, or making an arrangement for payment of a composition to his or her creditors;

- (g) conduct in respect of which there is conviction for—
 - (i) a criminal offence, excluding traffic offences; or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty; and
- (h) disqualification from managing or being involved in the management of a company **or other entity**.

(67) Every monetary penalty imposed and all costs and expenses payable under this section are recoverable as a debt due to the **Council Institute**.

(78) Any member suspended is deemed not to be a member however immediately upon the expiry of his or her period of suspension, his or her rights and privileges as a member must be restored.

(89) No decision of a disciplinary committee takes effect while a member to whom the decision relates remains entitled to appeal against such decision in accordance with section 34 or while any such appeal by him or her awaits determination by an Appeal Committee.

(910) A disciplinary committee may appoint a legal adviser who may be present at any inquiry into any matter to advise the disciplinary committee on all matters of law.

Procedure for disciplinary committee

33.—(1) Where a complaint has been referred to a disciplinary committee, the disciplinary committee must, without unreasonable delay—

- (a) inquire into any relevant complaint referred to it about any member; and
- (b) make or cause to be made any investigation it may consider necessary for the purpose of its hearings.

(2) For the purposes of conducting an investigation, a disciplinary committee may—

- (a) call upon or employ any person to make inquiries it deems necessary;
- (b) require the production for inspection by the committee or any person so employed of any book, document or paper which may relate to or be connected with the subject matter of the investigation;
- (c) require the member concerned to give all information in relation to any such book, document or paper which may reasonably be required by the disciplinary committee or by the person employed.

(3) Any member who, without lawful excuse, refuses or fails to produce to a disciplinary committee or to any person whom the disciplinary committee may employ for the purposes of any investigation any book, document or paper required of him or her or fails to give any such related information, commits an offence and is liable on conviction to a fine not exceeding \$1,000.

(4) A disciplinary committee to which a complaint has been referred must give or cause to be given to the member against whom a complaint has been made, by notice in writing signed by the chairperson, reasonable notice of the time when and the place where the disciplinary committee is to conduct its investigation, and such member may appear before the disciplinary committee and be heard in person or by a representative.

(5) If the member to whom notice has been given pursuant to this section does not attend at the time and place mentioned in the notice, the disciplinary committee may consider and determine the complaint in the absence of the member concerned.

Notice of decision and appeal procedure

34.—(1) A disciplinary committee must report all of its decisions to the Council and the Executive Director must send a notice in writing of each decision by registered post, **or electronic e-mail or other electronic means as the Council deems fit**, to the complainant other than the Council and to the member concerned.

(2) Each notice sent to the member concerned must be sent to the last known address of the member concerned.

(3) The member concerned may, within 21 days, or such longer period as the committee or the Council may allow after the service upon the member concerned of the decision of the disciplinary committee, appeal the decision by writing to the Executive Director stating his or her grounds of appeal.

(4) Upon receiving the appeal, the Council must appoint from amongst members of the Disciplinary Panel, a committee to hear and determine the appeal.

(5) A committee appointed under subsection (4) is to be called an “Appeal Committee” and consists of—

- (a) a member of the Disciplinary Panel appointed under section 31(1)(a) as the chairperson; and
- (b) 2 other members of the Disciplinary Panel, one being a member appointed under section 31(1)(a) and the other being a member appointed under section 31(1)(b).

(6) A person who was appointed to serve as a member of the disciplinary committee which considered a complaint in the first instance must not be appointed as a member of an Appeal Committee to consider the complaint.

(7) The Appeal Committee must allow the complainant and the member against whom the complaint was made a reasonable opportunity to submit a statement in writing or to appear before the Appeal Committee, either in person or by a representative.

(8) The Appeal Committee may determine the appeal after consideration of the record of the proceedings of the disciplinary committee but has the power to rehear any witness called before the disciplinary committee or, on special grounds and in the Appeal Committee’s sole discretion, to receive fresh evidence.

(9) After duly considering the appeal, the Appeal Committee may affirm, vary or reverse the decision of the disciplinary committee.

(10) An Appeal Committee must not impose penalties that are more severe than that imposed by the disciplinary committee against whose decision the appeal has been made.

(11) Every decision of an Appeal Committee must be in writing and the Executive Director must provide a copy of the decision—

- (a) to the Council;
- (b) by registered post to any complainant; and
- (c) by registered post to the member against whom the complaint was made, at the last known address of the member.

PART 6—OFFENCES AND PENALTIES

Holding out as a registered member

35. A person must not—

- (a) hold himself or herself out to be a Chartered Accountant, Associate Accountant or Accounting Technician;
- (b) adopt, use or exhibit the terms “Chartered Accountant of the Fiji Institute of Chartered Accountants”, “Associate Accountant of the Fiji Institute of Chartered Accountants”, or “Accounting Technician of the Fiji Institute of Chartered Accountants”; and
- (c) adopt, use or exhibit the term “accountant” or any other similar term or name in such circumstances as to indicate or likely to lead a person to infer that he or she is a Chartered Accountant, Associate Accountant or Accounting Technician of the Institute,

unless he or she is registered under this Act.

Holding out as a Chartered Accountant in Public Practice, Chartered Accountant in Limited Public Practice, auditor or tax consultant

36. A person who is not registered under this Act and is not the holder of a valid Certificate of Public Practice or Certificate of Limited Public Practice must not—

- (a) practise or hold himself or herself out as a Chartered Accountant in Public Practice, Chartered Accountant in Limited Public Practice, an auditor or tax consultant including adopting or using or exhibiting the term “Chartered Accountant in Public Practice”, “Chartered Accountant in Limited Public Practice”, “auditor” or “tax consultant”; or
- (b) adopt, or use the term “accountant” or any other similar term or name in such circumstances as to indicate or to be capable of being understood as indicating or to be likely to lead persons to infer that he or she is a Chartered Accountant in Public Practice, Chartered Accountant in Limited Public Practice or that he or she is qualified by any written law to practise

the profession of or is in practice as a Chartered Accountant in Public Practice or Chartered Accountant in Limited Public Practice, provided that nothing in this section prevents—

- (i) a legal practitioner from carrying on the work of a tax consultant;
- (ii) any person from practising publicly and describing himself or herself as a secretary, book-keeper or cost consultant, or under other designation not associated with or conveying the impression that he or she is an accountant or auditor;
- (iii) a member of a club, institution or association which is not carried on with a view to profit, or any person, acting as auditor of the club, institution or association, in any honorary capacity; and
- (iv) any person acting as an auditor of any society or other organisation specified by the Minister by order published in the Gazette, provided that the Minister may, in such order, specify the period for, and the conditions upon, which such exemption may continue in force.

Accountancy appointments to be held by accountants

37.—(1) ~~Except for section 35 and the Companies Act 2015, a~~ person must not hold any appointment under any written law as an accountant or auditor unless he or she is registered as a member under this Act.

(2) Subject to any provision to the contrary in any written law, a firm of which all the members are registered or registrable as chartered accountants under this Act may be appointed as an accountant or auditor under any written law.

All members of firm practising in Fiji to be registered

38.—(1) Subject to any other written law, a firm is not entitled to take or use the name or title of chartered accountants, public accountants, registered accountants or accountants, either alone or in combination with any other word, unless—

- (a) all partners of the firm who are practising in Fiji are registered under this Act;
- (b) any partner who is not practising possesses the qualifications which would enable him or her to be registered under this Act; and
- (c) either one partner of the firm is resident in and practising in Fiji or the registered office in Fiji of that firm is under the control of a person who is resident in Fiji and is registered under this Act.

(2) Every branch office of a firm must have at least one Chartered Accountant registered under this Act on a full time basis.

No remuneration recoverable in respect of certain appointments

39. A person is not entitled to recover any expenses or remuneration for or in respect of any of the appointments set out in section 37 unless the person has been registered under this Act.

Public officers

40. Sections 37 and 39 do not apply to the Auditor-General or to any public officer authorised by him or her or to any public officer or any officer of any statutory authority in the exercise of their powers or in the performance of their official duties.

Penalty for certain offences

41. Any person who contravenes section 35, 36, 37, 38 or 39 commits an offence and is liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding one year or both, and on a subsequent conviction, to a fine not less than \$5,000 and not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

Evidence of registration or licensing

42.—(1) The list of names of persons included in the Register is evidence that person is registered under this Act and the absence of the name of any person is evidence, unless the contrary is made, that such person is not registered under this Act.

(2) Notwithstanding subsection (1), a certified copy under the hand of the Executive Director of the name of a person in the Register is evidence that such person is registered under this Act and a certificate under the hand of the Executive Director that the name of a person is not included in the Register or has been removed from the Register is evidence of non-registration or removal as the case may be.

Acts by body corporate or firm implying accountancy qualifications

43.—(1) Any act done by a body corporate or any director or officer of the body corporate which implies that the body corporate is a Chartered Accountant in Public Practice or Chartered Accountant in Limited Public Practice is an offence and the body corporate is liable on conviction to a fine not exceeding \$10,000 and, where the act is done by the director or officer, the director or officer is liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding one year or both.

(2) Where any firm does any act which in the case of a person would be an offence under any provision of this Act, every member of the firm is deemed to have committed such offence, unless he or she proves that he or she was unaware of the commission of such act.

Fraudulent practices in relation to registration

44. Any person who—

- (a) procures or attempts to procure registration or a certificate of registration under this Act by knowingly making, producing or causing to be made any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise;
- (b) wilfully makes or causes to be made any falsification in the Register;
- (c) forges, alters or counterfeits any certificate of registration issued under this Act;
- (d) uses any forged, altered or counterfeited certificate of registration under this Act knowing the same to have been forged, altered or counterfeited; or

- (e) impersonates a member of the Institute or buys, sells or fraudulently obtains a certificate of registration issued under this Act,

commits an offence and is liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding **one5** years or both.

PART 7—MISCELLANEOUS

Regulations

45. The Minister may make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act including prescribing offences and penalties not exceeding a fine of \$10,000 or imprisonment for a term of 5 years or both.

Rules

46.—(1) Subject to subsection (2), the Institute may with the approval of the Minister, make rules to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

(2) Any resolution of the Institute to amend, revoke or replace any of the rules requires the approval of 75% of the members of the Institute present and voting at a meeting at which the resolution is considered and who, as at the date of the meeting, are entitled to vote.

Recovery of moneys by Council

47. In addition to any other method of recovery and to any other right, remedy or power vested in the Council, any sum of moneys payable under this Act or subsidiary legislation made under this Act other than for the offences under Part 6 may be recoverable by the Council as a debt in any court or tribunal of competent jurisdiction.

Service of notice by post

48. A certificate in writing signed by the Executive Director or a member of the Council that any notice was properly addressed and posted and setting out the date of such posting is *prima facie* evidence of service.

Office of the Institute

49.—(1) The Institute must maintain an office and the address of the office, and any change to the address must be notified by the Council in the Gazette.

(2) Any writ, complaint, notice, pleading, order, summons, warrant or other written communication required, authorised, ordered to be served on or delivered or sent to the Institute or the Council is deemed to be duly served, delivered or sent if left at the office of the Institute.

Protection from liability

50.—(1) No civil or criminal proceedings lie against the Council nor any member, officer, employee, agent or consultant of the Council for anything he or she or it may do or fail to do in the course of the exercise or purported exercise of his or her or its powers and authority or performance of his or her or its duties and functions, unless it is shown that he or she or it did not act in good faith or with reasonable care.

(2) No civil or criminal proceedings lie personally against any member, officer, employee, agent or consultant of the Council or other person acting under the direction of the Council for anything which is done in good faith, or done or intended to be done in the execution or purported exercise of his or her powers and authority or performance of his or her duties and functions under the Act or any other written law.

Transitional

501. Any person registered, licensed or appointed under the Fiji Institute of Accountants Act 1971 immediately before the commencement of this Act, may continue to carry out or provide such accountancy services as if registered, licensed or appointed under this Act unless and until such registration, licence or appointment is earlier revoked, cancelled or terminated.

Repeal

512. The Fiji Institute of Accountants Act 1971 is repealed.

Consequential amendments

523.—(1) The Income Tax (Exempt Income) Regulations 2016 is amended in the Schedule in Part 2 after paragraph (5) by inserting the following new paragraph—

“(6) The Fiji Institute of Chartered Accountants.”.

(2) All written laws and State documents of any nature whatsoever are amended by deleting “Fiji Institute of Accountants” wherever it appears and substituting “Fiji Institute of Chartered Accountants”, unless the context otherwise requires.

(3) All State documents of any nature whatsoever and all written laws and subsidiary legislation are amended by deleting “Institute” or “Fiji Institute of Accountants”, in reference to the Fiji Institute of Accountants, wherever it appears and substituting “Fiji Institute of Chartered Accountants”, unless the context otherwise requires.

Review

54. The Council must conduct a review of the Act at least once every 3 years and must prepare and submit a report to the Minister.

October 2021

FIJI INSTITUTE OF CHARTERED ACCOUNTANTS BILL 2021

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Fiji Institute of Accountants Act of 1971 (**'FIA Act'**) was amended in May 1982 and in June 1997. The changes in the business environment and the developments within the accounting profession in the past 50 years have highlighted the need to review the FIA Act and replace it with a new legislation to align with today's legislation and practices.
- 1.2 The Fiji Institute of Chartered Accountants Bill 2021 (**'Bill'**) therefore seeks to address the requirements of today's accounting profession in terms of registration and regulation, and updates the categories and requirements for membership to the Fiji Institute of Accountants, now referred to as the "Fiji Institute of Chartered Accountants" (**'Institute'**).
- 1.3 The Bill also seeks *inter alia* to remove obsolete provisions from the law such as provisions on licensed accountants given that this term is no longer used; instead those who wish to be members of the Institute are registered according to their qualifications that correspond to the current categories for membership, i.e. Chartered Accountants, Chartered Accountants in Public Practice, Chartered Accountants in Limited Public Practice, Associate Accountants, Accounting Technicians and Fellows, which then entitle them to provide their accounting services accordingly.
- 1.4 With the inclusion of new categories of membership to the Institute, more persons will be able to practice in the accounting profession and would then be able to provide accounting services to more areas in Fiji. This democratisation of accounting services in Fiji also allows individuals to set up accounting firms of their own without unnecessary restrictions. It would also create a level playing field and create business and employment opportunities. It would also mean that micro, small and medium enterprises (**'MSMEs'**) would be able to more readily and inexpensively access professional accounting services. This would result in mainstreaming of MSMEs into the financial system and thereby giving them better opportunities to access credit.

1.5 These accounting professionals can also advertise. Members would be entitled to use and exhibit the appropriate abbreviations to authenticate their membership and qualifications. These include “CA (Fiji)”, “CAPP (Fiji)”, “CALPP (Fiji)”, “CLPP (Fiji)”, “AA (Fiji)”, “AT (Fiji)” and “FCA (Fiji)”.

1.6 Lastly, the Bill seeks to remove archaic language from the law.

2.0 CLAUSES

2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new legislation will come into force on a date or dates appointed by the Minister responsible for finance (**‘Minister’**) by notice in the Gazette.

2.2 Clause 2 of the Bill provides for the definitions of certain terms used in the new legislation.

2.3 Clause 3 of the Bill provides for the objectives of the new legislation.

2.4 Clause 4 of the Bill provides for the continuation of the Fiji Institute of Accountants established under the FIA Act as the “Fiji Institute of Chartered Accountants”.

2.5 Clauses 5 and 6 of the Bill provide for the functions and powers of the Institute respectively.

2.6 Clause 7 of the Bill provides that the Institute consists of persons registered as members under the new legislation.

2.7 Clause 8 of the Bill provides for the composition of members of the Council. Clause 8 of the Bill also outlines the appointment and terms of members of the Council.

2.8 Clause 9 of the Bill provides for the appointment and term of the president and vice president of the Institute by members of the Council. Clause 9 of the Bill also specifies the process for when the president or vice president is not present to preside at a meeting of the Council.

2.9 Clause 10 of the Bill outlines instances where a member of the Council may vacate his or her office. Where there is a vacancy, the Council may appoint a person for the remainder of the term before the next annual general meeting.

2.10 Clause 11 of the Bill allows the Council to act despite a vacancy of office, provided that not less than 5 members of the Council are in office.

2.11 Clauses 12 and 13 of the Bill provide for the functions and powers of the Council respectively.

2.12 Clause 14 of the Bill outlines the processes for a meeting of the Council where the Council is also empowered, subject to the new legislation, to regulate its own procedures through any rules of the Institute.

- 2.13 Clause 15 of the Bill provides for the appointment and functions of the Executive Director.
- 2.14 Clause 16 of the Bill requires the Council to keep a register of members of the Institute (**‘Register’**).
- 2.15 Clause 17 of the Bill requires a person who wishes to become a member of the Institute to submit a written application to the Institute along with the approved application fee.
- 2.16 Clause 18 of the Bill highlights the eligibility criteria for the registration as a member of the Institute.
- 2.17 Clause 19 of the Bill outlines the requirements for the registration of a Chartered Accountant under the new legislation. Clause 19 of the Bill also provides for what a registered Chartered Accountant is entitled to.
- 2.18 Clause 20 of the Bill outlines the requirements for the registration of an Associate Accountant under the new legislation. Clause 20 of the Bill also provides for what a registered Associate Accountant is entitled to.
- 2.19 Clause 21 of the Bill prohibits a member from offering his or her services to the public using the designation of a Chartered Accountant in Public Practice or Chartered Accountant in Limited Public Practice or the abbreviations “CAPP (Fiji)”, “CPP (Fiji)”, “CALPP (Fiji)” or “CLPP (Fiji)” unless he or she has a valid Certificate of Public Practice or Certificate of Limited Public Practice issued under the new legislation.
- 2.20 Clause 22 of the Bill sets out the eligibility criteria for a person to be registered as an Accounting Technician under the new legislation.
- 2.21 Clause 23 of the Bill provides for the admission of a registered Chartered Accountant member as a Fellow of the Institute provided he or she meets the specified requirements. A Fellow of the Institute is entitled to describe himself or herself as such and to use the abbreviations “FCA (Fiji)” after his or her name.
- 2.22 Clause 24 of the Bill requires a member of the Institute to pay, at registration, the approved fee and at such intervals that the Institute may require. Clause 24 of the Bill also empowers the Council to remove the name of a member who is in arrears for 3 months and over, from the Register. The Executive Director in this instance must give notice to the member concerned of the removal.
- 2.23 Clause 25 of the Bill provides for the resignation process of a member of the Institute, in which case his or her name will be removed from the Register. Clause 25 of the Bill also outlines instances where the Council may refuse to accept a member’s resignation.

- 2.24 Clause 26 of the Bill allows for the reinstatement of a member who has been removed from the Register.
- 2.25 Clause 27 of the Bill allows the Council to make rules in relation to the conduct of its members.
- 2.26 Clause 28 of the Bill provides the process for making a complaint against a member of the Institute, that is, a formal complaint must be made in writing, supported with evidence and statutory declarations as may be required and submitted to the Executive Director.
- 2.27 Clause 29 of the Bill provides for the composition of an Assessment Committee, that is, 3 members of the Council and 2 non-Council members, which is responsible for the examination and assessment of any written complaint lodged against a member.
- 2.28 Clause 30 of the Bill provides for the composition of a Disciplinary Panel, that is, not less than 20 members appointed by the Council.
- 2.29 Clause 31 of the Bill provides for the appointment and composition of a disciplinary committee.
- 2.30 Clause 32 of the Bill provides for the powers of a disciplinary committee in relation to, *inter alia*, the professional misconduct or unsatisfactory conduct of members.
- 2.31 Clause 33 of the Bill provides for the procedure for a disciplinary committee when inquiring into a complaint or conducting an investigation.
- 2.32 Clause 34 of the Bill requires a disciplinary committee to report all of its decisions to the Council and also requires the Executive Director to send a written notice of each decision to a complainant and the member concerned by registered post.
- 2.33 Clause 34 of the Bill also allows for the appeal of such decision in which case an Appeal Committee must be appointed to hear and determine the appeal. The Executive Director must send a copy of such decision to the Council and by registered post to the complainant and to the member concerned.
- 2.34 Clause 35 of the Bill requires a person who practices or holds himself or herself out as a Chartered Accountant, Associate Accountant or Accounting Technician to be registered under the new legislation.
- 2.35 Clause 36 of the Bill requires a person who practices or holds himself or herself out as a Chartered Accountant in Public Practice or Chartered Accountant in Limited Public Practice to be registered and hold a valid Certificate of Public Practice or Certificate in Limited Public Practice as applicable, issued under the new legislation.

- 2.36 Clause 37 of the Bill requires any person appointed under any written law as an accountant or auditor to be registered under the new legislation.
- 2.37 Clause 38 of the Bill requires *inter alia* for all practising partners in a firm to be registered under the new legislation.
- 2.38 Clause 39 of the Bill specifies that a person is not entitled to any remuneration in respect of any appointment set out under clause 37 of the Bill unless the person is registered under the new legislation.
- 2.39 Clause 40 of the Bill provides that clauses 37 and 39 of the Bill do not apply to the Auditor-General, authorised public officers or officers of any statutory authority in the exercise of their powers or performance of their official duties.
- 2.40 Clause 41 of the Bill provides penalties for specific offences provided under clauses 36, 37, 38 and 39 of the Bill.
- 2.41 Clause 42 of the Bill provides that the list of names that are included on the register is evidence that the persons whose names are listed are registered under the new legislation.
- 2.42 Clause 43 of the Bill provides an offence provision for acts done by a body corporate or firm implying accountancy qualifications.
- 2.43 Clause 44 of the Bill provides an offence provision which lists fraudulent practices in relation to registration under the new legislation.
- 2.44 Clause 45 of the Bill empowers the Minister to make regulations to prescribe matters that are required or permitted under the new legislation which include *inter alia* the prescription of offences and penalties not exceeding a fine of \$10,000, imprisonment for a term not exceeding 5 years or both.
- 2.45 Clause 46 of the Bill empowers the Institute, with the approval of the Minister, to make rules. Clause 46 of the Bill also requires the approval of 75% of the Institute in order to make, amend, revoke or replace any such rules.
- 2.46 Clause 47 of the Bill allows the Council to recover moneys payable to the Council under the new legislation and any subsidiary legislation as a debt in any court of tribunal of competent jurisdiction.
- 2.47 Clause 48 of the Bill provides for the service of notice by post to the Council.
- 2.48 Clause 49 of the Bill requires the Institute to maintain an office and where the address is changed, the Council must notify such change in the Gazette. Clause 49 of the Bill also provides for the methods of the service of notices to the Institute.

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2.49 Clause 50 of the Bill provides for the continuation of any person’s registration, licensing or appointment under the FIA Act, to continue under the new legislation until such registration, licensing or appointment is expired, revoked, cancelled or terminated.

2.50 Clause 51 of the Bill repeals the FIA Act.

2.51 Clause 52 of the Bill consequentially amends the Income Tax (Exempt Income) Regulations 2016 to provide for the exemption of the Institute from income tax.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The new legislation comes under the responsibility of the Minister responsible for finance.

A. SAYED-KHAIYUM
Attorney-General