

# **HUMAN RESOURCE MANAGEMENT PROFESSIONALS BILL 2009**

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# **THE HUMAN RESOURCE MANAGEMENT PROFESSIONALS BILL 2009**

A Bill for

An Act of Parliament to make provision for the establishment of an Institute to be known as the Institute of Human Resource Management to promote the standards of Human Resources Professionals and a Committee and a Board to be known respectively as the Registration of Human Resource Management Professionals Committee and the Human Resource Management Professionals Examination Board; to provide that the Institute and the Board shall each be a body corporate and to specify their respective functions and those of the Registration Committee; to provide for the examination and registration of Human Resource Management Professionals and make provision for matters concerned therewith and incidental thereto.

**ENACTED** by the Parliament of Kenya as follows: -

## **PART I – PRELIMINARY**

Short Title and  
Commencement.

1. This Act may be cited as the Human Resource Management Professionals Act and shall come into operation when the Council is inaugurated by the Minister.

Interpretation.

2. (1) In this Act, unless the context otherwise requires –  
“Chairman” means the Chairman of the Institute and includes a person appointed under paragraph 2 of the First Schedule to act as Chairman;

“Council” means the Governing Council of the Institute established under the provisions of section 8;

“Disciplinary Committee” means the committee established under the provisions of section 29;

“Examination Board” means the Human Resource Management Professionals Examination Board established under the provisions of section 14;

“Gazette” means the Kenya Gazette;

“Human Resource Management” means the integrated use of systems, policies, and practices that govern the management and productivity of people to achieve the desired goals of an organization;

“Executive Director” means the person appointed as the Executive Director of the Institute pursuant to the provisions of section 10;

“Institute” means the Institute of Human Resource Management established under the provisions of section 3;

“practicing certificate” means a practicing certificate issued by the Registration Committee pursuant to section 21;

“register” means the register kept pursuant to section 26;

“Registration Committee” means the Registration of Human Resource Management Professionals Committee established under the provisions of section 11;

“Human Resource Professional” means a person registered as a Human Resource Management Professional under the provisions of section 23;

“Minister” means the Minister responsible for labour and human resource development.

(2) For the purpose of this Act –

- (a) a person is registered if his name is recorded in the register pursuant to section 26 (1) (a);
- (b) a person is not registered if his registration is cancelled and the particulars of the cancellation are recorded in the register pursuant to section 26 (1) (c);

and

- (c) a person is registered if the fact of restoration of his registration is recorded in the register pursuant to section 26 (1) (d).

## **PART II – ESTABLISHMENT OF VARIOUS BODIES**

### **Institute of Human Resource Management**

Establishment of  
Institute.

3 (1) There is established an Institute to be known as the Institute of Human Resource Management.

(2) The Institute-

(a) shall be a body corporate;

(b) shall have a common seal which shall be kept in such manner as the council directs;

(c) may acquire, hold and dispose of property;  
and

(d) may sue and be sued in its corporate name;

(e) may borrow, lend and raise money.

(3) All courts, Judges and other persons acting judicially shall take judicial notice of the seal of the Institute affixed to a document and shall presume that it was dully affixed.

(4) The provisions of the First Schedule shall have effect with respect to the Institute.

Membership of  
Institute

4. (1) A person who is registered under subsection (2) and (3) is a member of the Institute.

(2) The members of the Institute are classified into the following categories:-

(a) Fellows comprising those persons who become fellows pursuant to an invitation under subsection

- (3) each of whom shall be titled “Fellow of the Institute of Human Resource Management” (designator letters FIHRM);
- (b) Members comprising of those members of the Institute who are not Fellows) each of whom shall be titled “Member of the Institute of Human Resource Management. (designator letters MIHRM);
- (c) Associates comprising persons qualified to be registered under Section 24 but who are however not yet registered under this Act each of whom shall be titled “Associate Member of the Institute of Human Resource Management” (designator letters AMIHRM);
- (d) Affiliates comprising individuals who have strong interest in professionally managed exams including students who aspire to be Human Resource Professionals each of whom shall be titled “Affiliate Member of the Institute of Human Resource Management” (designator letters AfMIHRM); and
- (e) Corporate comprising both private and public institutions and organizations and includes companies, partnerships and other corporate bodies.

(3) Where the Council considers that a member of the Institute has rendered outstanding services to the Human Resource Management Profession, the council may invite the member to become a Fellow.

(4) Members of the Institute shall pay such fees and subscriptions as the Council may determine from time to time under Section 8 (3).

Honorary Fellows

5. (1) Where the Council considers that a person (not being a member of the Institute) has rendered exceptional services to the Institute or the Human Resource Management Profession, the council may invite the person to become an Honorary Fellow of the Institute.

(2) An Honorary Fellow shall not be a member of the Institute.

Chairman of the Institute

6. There shall be a Chairman of the Institute who shall be elected in the manner provided in the paragraph 1 of the First Schedule.

Functions of the Institute

7. The functions of the Institute are-

- a) to promote standards of professional competence and practice amongst members of the Institute;
- (b) to promote research into the areas of Human Resource practice and related matters, and the publication of books, periodicals, journals and articles in connection therewith;
- (c) to network with regional and international related bodies to promote and develop progressive Human Resource Management practices in the region and around the world;
- (d) to advise the Examinations Board on matters relating to examination standards and policies;
- (e) to carry out any other functions prescribed for it under any of the provisions of this Act or under any written law; to advise the Registration Committee on matters relating to registration;
- (f) to advise the Registration Committee on matters relating to registration; and
- (g) to do anything incidental or conducive to the performance of any of the preceding functions.

The Council

8. (1) The Institute shall be governed by a council to be known as the Governing Council of the Institute.

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

(3) The fees and subscriptions payable from time to time by members of the Institute shall be determined by the Council and approved by the Annual General Meeting.

(4) The provisions of the Second Schedule shall have effect with respect to the Council.

Constitution of the Council

9. The Council shall consist of –

- (a) the Chairman;
- (b) nine members of the Institute elected in the manner provided in the paragraph 1 (i) of the Second Schedule;
- (c) the Executive Director;
- (d) one member appointed by the Minister;
- (e) one member nominated by the Council for Higher Education;
- (f) a representative from Federation of Kenya Employers;  
and
- (g) a representative from Central Organization of Trade Unions.

Executive Director      10.(1) The Council shall appoint an Executive Director for the Institute.

(2) The Executive Director shall hold and vacate the office in accordance with the terms of the instrument of his appointment to the office.

(3) The Executive Director shall be responsible for the day to day running of the Institute and shall also act as the secretary to the Council.

(4) In addition to the functions which he is required to exercise and perform by or under this Act, the Executive Director shall exercise and perform functions which the Council may from time to time determine.

**Registration of Human Resource Management Professionals Committee**

The Registration Committee      11. (1) There shall be a Committee to be known as the Registration of Human Resource Management Professionals Committee.

(2) The Registration Committee shall be a Committee of the Institute.

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

Constitution of the Registration Committee      12. (1) The Registration Committee shall consist of five members appointed by the Council from the membership of the Institute one of whom shall be nominated by the Examinations Board.

Registrar of the  
Registration  
Committee

13. (1) The Council shall appoint a Registrar of the Registration Committee.

(2) The Registrar of the Registration Committee shall hold and vacate the office of the Registrar in accordance with the instrument of his appointment.

(3) In addition to the functions which he is required to exercise and perform by or under this Act, the Registrar of the Registration Committee shall exercise and perform functions which the Registration Committee may, from time to time determine.

(4) The Registrar of the Registration Committee may attend meetings of the Registration Committee and may, with the consent of the person presiding at a meeting, take part in the deliberations on any matter arising at the meeting, but shall not be entitled to vote on any such matter.

### **Human Resource Management Professionals Examinations Board**

The Examinations  
Board

14. (1) There shall be a board to be known as the Human Resource Professionals Examinations Board.

(2) The Examination Board shall be a body corporate;

(3) All courts, Judges and other persons acting judicially shall take judicial notice of the seal of the Institute affixed to a document and shall presume that it was duly affixed.

(4) The provision of the Fourth Schedule shall have effect with respect to the Examinations Board.

Membership of the  
Examinations Board

15. (1) The Examinations Board shall consist of nine members appointed by the Council, of whom-

- (a) two shall be nominated by the Minister for the time being responsible for education one of whom shall be from Kenya Institute of Education;
- (b) one shall be the Director of Personnel Management or a person nominated by him;
- (c) one shall be a person nominated by the Commission for Higher Education;
- (d) one shall be nominated by the Attorney General; and
- (e) four shall be nominated by the Council.

(2) In nominating a person for appointment pursuant to subsection (1) (a) and (b) the Minister and the Director of Personnel Management concerned shall have regard to the desirability of a person being appointed who is a member of or has an interest in the Institute.

(4) the person nominated pursuant to subsection (1) (d) shall be a person engaged in Human Resource Practice and is either a member or has an interest in the Institute.

Registrar to the  
Examination Board

16. (1) There shall be a Registrar to the Examinations Board who shall be appointed by the Council.

(2) The Registrar to the Examinations Board shall hold and vacate the office of the Secretary in accordance with the terms of the instrument of his appointment to that office.

(3) The Registrar to the Examinations Board may attend meetings of the Examinations Board and may, with the consent of the person presiding at a meeting, take part in the deliberations on any matter arising at the meeting, but he shall not be entitled to vote on any such matter.

(4) In addition to the functions which he is required to

exercise and perform by or under this Act, the Registrar to the Examinations Board shall exercise and perform functions which the Examinations Board may, from time to time, determine.

Functions of the  
Examinations Board

17. (1) The functions of the Examinations Board are to-

- (a) prepare syllabuses for Human Resource Management Professionals Examinations;
- (b) make rules with respect to examinations;
- (c) issue certificates to candidates who have satisfied examination requirements;
- (d) promote recognition of its examinations locally and internationally; and
- (e) do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Examinations Board shall consult with the Council of the Institute as often as it considers necessary for the purpose of exercising and performing its duties.

(3) The Examinations Board may establish such committees (including examinations committees) as it considers necessary for the purpose of exercising and performing its functions and, subject to subsection (4) and (5) may determine the constitution and procedure of any such committee.

(4) The majority of the members of any examinations committees established pursuant to subsection (3) for the purpose of conducting examinations shall be members of the Institute.

(5) The chairman of any committee established pursuant to subsection (3) shall be a member of the Examinations Board and shall be appointed by that Board.

### **PART III – PRACTISING CERTIFICATES AND REGISTRATION OF HUMAN RESOURCE MANAGEMENT PROFESSIONALS**

Practising Certificates

18. (1) After the expiration of twelve months or such longer period as the Minister may declare by notice in the Gazette, after the commencement of this Act, a person shall practice

as a Human Resource Management Professional if he is the holder of a practising certificate that is in force.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not less than fifty thousand shillings or imprisonment for a period not more than 3 years or both.

Practicing as a Human  
Resource Management  
Professional

19. Subject to this section, a person practices as a Human Resource Management Professionals for the purpose of this Act if, in consideration of remuneration or other benefits received or to be received-

(a) engages on his own or in partnership with others or as an employee or agent of another who is in Human Resource Management practice; or

(b) he engages in any practice, or performs or offers to perform any services, which may be prescribed.

Application for  
Practising Certificate

20. (1) A person wishing to obtain a practicing certificate shall apply to the Institute.

(2) An application for a practicing certificate shall be in the prescribed form and shall be accompanied by the prescribed fee.

Issue of Practising  
Certificate

21. (1) Where an application is made by a person in accordance with section 20, the Registration Committee shall issue to him a practicing certificate if it is satisfied that-

(a) he is registered under this Act

(b) he has received from a Human Resource Management Professional who is the holder of a practicing certificate instruction of such a nature and for such period as may be prescribed; and

(c) he meets such other requirements as may be prescribed.

(2) A practicing certificate issued to any person remains the

property of the Registration Committee.

Duration of Practising  
Certificate

22. (1) A practising certificate remains in force unless it ceases to be in force under subsection (2), (4) or (5) of this section.

(2) A practising certificate issued to a person ceases to be in force if that person ceases to be registered.

(3) Where a practising certificate issued to a person ceases under sub-section (2) to be in force, that practising certificate does not come into force again if the person is subsequently registered, but does come into force again if the registration of the person is restored pursuant to subsection (5) or (6) of Section 27.

(4) Subject to section 33, (3), a practising certificate ceases to be in force during any period when it is suspended pursuant to section 32 (1) (e) or, if that period is varied on appeal under section 33, during the period as so varied.

(5) A person may surrender to the Registration Committee a practicing certificate issued to him and, in that event, the certificate ceases to be in force.

(6) Where a practising certificate ceases to be in force under subsection (2), the person to whom the certificate was issued shall deliver it to the Registration Committee within fourteen days after the date of which it ceases to be in force.

(7) A person who, without reasonable excuse contravenes subsection (6) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings.

Applications for  
Registration

23. (1) A person wishing to be a Human Resource Management Professional shall apply to the Registration Board to be registered as such.

(2) An application to be a Human Resource Management Professional shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) Where an application is made by a person in accordance with this section, the Registration Committee shall approve

the application if it is satisfied that the applicant:-

- (a) is of or above the age fixed by the Registration Committee pursuant to subsection (4);
- (b) he is qualified to be registered ; and
- (c) he is not disqualified from being registered.

(4) A person who, in an application to be registered, willfully makes a false or misleading statement shall be guilty of an offence and liable to be a fine not exceeding fifty thousand shillings or to imprisonment for a period and not exceeding three years or both.

Qualifications

24. (1) Subject to this section, a person is qualified to be registered if-

- (a) he has been certified by the Examination Board as having attained the final qualification in Human Resource Management practice; or
- (b) he holds a qualification approved under subsection (2) by the Registration Committee; and
- (c) he is a Citizen of Kenya.

(2) The Registration Committee may from time to time, by notice in the Gazette, approve qualifications, which it considers sufficient to allow a person to be registered, and may, in the same manner, withdraw that approval.

(3) Notwithstanding subsection (1) or (2), the Registration Committee may require a person making an application for admission to satisfy the Registration Committee, in such manner as it directs, that his knowledge of local law and practices, and that his professional conduct and general characters have been, such as in the opinion of the Registration Committee make him a fit and proper person to be admitted, and unless the person so satisfies the Registration Committee he shall not be treated as being qualified to be registered.

Disqualification.

25. (1) Subject to this Section, a person is disqualified from being registered.

(a) if he is convicted by a court of competent jurisdiction in Kenya or elsewhere of any offence involving fraud or dishonesty;

(b) if he is a undischarged bankrupt;

(c) if he is of unsound mind and has been certified to be so by a medical practitioner; or

(d) during any period when the Registration Committee had determined under section 32 (1) (d) that he shall not be registered or during any such period as varied by the High Court under section 33.

(2) A person may not be treated as disqualified under subsection (1) (a) if the Registration Committee, having regard to –

(a) the period which has elapsed since the conviction concerned or

(b) the circumstances of the offences determines that it would be unreasonable to so treat him.

(3) A person shall not be treated as disqualified under subsection (1) (b) if the Registration Committee is satisfied that the bankruptcy of the person concerned arose as a result of unavoidable losses or misfortunes.

(4) A person shall not be treated as being disqualified under subsection (1) (d) if the High Court allows an appeal under section 33.

Registration

26. (1) The Registrar of the Registration Committee shall cause to be kept a register in which shall be recorded –

(a) the name of any person whose application under section 23 is approved;

(b) the fact that a practising certificate is issued to any person or that any such certificate ceases to be in force under this Act;

(c) particulars of the cancellation under this Act of the registration of any person;

(d) the fact that the registration of any person is restored under this Act; and

(e) such other matters as the Registration Committee may determine.

(2) The Registrar of the Registration Committee may cause to be made such alterations in the Register as are necessary to ensure that the matters recorded therein are accurate.

(3) The register may, at all reasonable hours, be inspected and copies of all or any part of any entry in the register taken-

(a) without payment by-

i) a member of the police force or a public servant, acting in the course of his duty; or

(ii) a person authorized by the Registrar of the Registration Committee; or

(b) on payment of such fee as may be prescribed, by any other person.

(4) The register shall be received in proceedings before a court or tribunal as evidence of the matters recorded therein which are required by or under this Act to be so recorded.

(5) A document purporting to be certified by the Registrar of the Registration Committee -

(a) to be a true copy of any entry in the register;

(b) stating that a person is not, or was not on a date specified in the document, the holder of a practising certificate;

shall be received in proceedings before a court or tribunal as *prima facie* evidence of any such matters contained in the entry or of that fact, as the case may be.

(6) Proceedings on an inquiry under this Act before the

Disciplinary Committee shall be deemed to be proceedings before a tribunal for the purposes of this section.

Cancellation of  
Registration

27. (1) Subject to this section, the Registration Committee shall cancel the registration of a member of the Institute if –

- (a) a determination that the registration of the member be cancelled is made under section 32 (1) (d);
- (b) any circumstances arises which, if the member were then a person applying for registration, would disqualify him under section 25 from being admitted; or
- (c) required under subsection (4) of this section to do so.

(2) The Registration Committee shall not cancel the registration of a member of the Institute under subsection (1) (b) unless it has afforded the member an opportunity to show cause why his registration should not be cancelled.

(3) Subsections (2) and (3) of section 25 shall apply in relation to the cancellation of the registration of a member of the Institute under subsection (1) (b) of this section as they apply for the purpose of determining whether or not a person is disqualified from being registered.

(4) The council may require the Registration Committee to Cancel the registration of a member of the Institute who fails to comply with the requirements of section 4.

(5) When the registration of a member of the Institute is cancelled under subsection (1) (a) the Registration Committee shall restore the registration, if, on an appeal made under section 33 the High Court allows the appeal.

(6) The Council may direct the Registration Committee to restore the registration of a person whose registration is cancelled under subsection (1) (c) and, if it does so, the Registration Board shall restore the registration.

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

(8) The registration of a member shall be cancelled by

recording in the register particulars of the cancellation.

#### **PART IV – DISCIPLINE**

Professional  
misconduct

28. (1) A member of the Institute is guilty of professional misconduct if he –

- (a) deliberately fails to follow the laid down Human Resource procedures of his employer or client save those which are in violation of law;
- (b) refuses fails or neglects to apply established Human Resource principles in the course of discharging his professional functions;
- (c) Engages himself in corrupt activities or practices;
- (d) is guilty of gross negligence in the conduct of his professional duties;
- (e) engages himself in negative practices such as nepotism, tribalism, racism and other acts of discrimination in the discharge of his professional functions;
- (f) discloses information acquired in the course of his duties to any person without the consent of his employer or client or otherwise than required by law;
- (g) uses his position to obtain favours of a sexual kind or other benefits for which he is not entitled to in the discharge of his professional functions;
- (h) engages in activities which are in conflict with those of his employer or client or activities which are contrary to those for which he is registered as a Human Resource Professional;
- (i) is found guilty or fraud or any dishonest act;
- (j) allows any person to practice in his name as a Human Resource Professionals unless such a person is the holder of a practicing certificate and is in partnership with him or employed by him;
- (k) enters for the purpose of or in the course of practising as a Human Resource Professional, into partnership with a person who does not hold a practising certificate or secures any professional business through the service of such a person or by means not open to a Human Resource Professional;

- (l) he pays or allows or agrees to pay or allow directly or indirectly, to any person (other than a person who holds a practising certificate, is a retired partner or the legal representative of such a partner) any share, commission or brokerage out of the fees for, or profits of, his professional services;
- (m) he expresses an opinion on any matter with which he is concerned in a professional capacity without obtaining sufficient information on which to base the opinion;
- (n) he fails to keep the funds of a client in a separate banking account or to use any such funds for purposes for which they are intended; and
- (o) does or fails to do any other act which may be prescribed.

The Disciplinary  
Committee

29. (1) There shall be a Committee to be known as the Disciplinary Committee.

(2) The Disciplinary Committee shall consist of five members who shall be appointed by the Council from the membership of the Institute and the quorum of any meetings of the Committees shall be three.

(3) There shall be a Chairman of the Disciplinary Committee who shall be appointed by the Council

(4) Subject to this section, a member of the Disciplinary Committee holds office for three years and is eligible for reappointment.

(5) The Council may, at any time, with or without cause, terminate the appointment of a member of the Disciplinary Committee or terminate the appointment of a Chairman of the committee.

(6) Where a member of the Disciplinary Committee is unable to exercise and perform his functions the Council may appoint a person to replace the member for such period as may be necessary.

Inquiry of the  
Disciplinary  
Committee

30. (1) Where the Council has reason to believe that a member of the Institute may have been guilty of professional misconduct it shall refer the matter to the Disciplinary

Committee which shall inquire into the matter.

(2) The provisions of the Fifth Schedule shall have effect with respect to any inquiry by the Disciplinary Committee which shall inquire into the matter

Recommendations  
after Inquiry

31. (1) On the completion of an inquiry under section 30 into the alleged professional misconduct of a member of the Institute, the Disciplinary Committee shall have power to do any of the following-

- (a) decide that no further action be taken against the member;
- (b) decide that the member be reprimanded;
- (c) decide that the member be reprimanded with publication of the reprimand in the Gazette;
- (d) submit to the Council a report of the inquiry calling for the registration of the member be cancelled and that he be not registered for such period (including life) as is specified; or
- (e) submit to the Council a report of the inquiry calling for any practicing certificate held by the member to be suspended.

(2) where the Disciplinary Committee in a report makes a recommendation –

- (a) under subsection (1) (a) or (b) and the Council does not agree with the recommendation; or
- (b) under subsection (1) (c), (d) or (e),

the Council shall, within fourteen days of receipt of the report, forward to the Registration Board a copy of the report together with any recommendation referred to in subsection (1) which the Council considers appropriate in the circumstances of the case, which recommendation may or may not be the same as the recommendation of the Disciplinary Committee.

Determination of the  
Registration  
Committee

32. (1) On the receipt pursuant to section 31 of a copy of a report relating to the alleged professional misconduct of a member of the Institute, the Registration Committee may make one of, or more than one, of the following determinations, namely –

- (a) determine that no further action be taken against the member;
- (b) reprimand the member
- (c) reprimand the member and cause the fact of the reprimand to be published in the Gazette;
- (d) determine that the registration of the member be cancelled and direct that he be not registered for such period (including life) as is specified; or
- (e) suspend the practising certificate of the member for such period as is specified.

(2) Before making a determination under subsection (1) Registration Committee may in writing, require the Council to furnish the Registration Committee such further evidence concerning any matter that is so specified, and the Council shall comply with the requirement.

(3) In order to comply with a requirement of the Registration Committee under subsection (2) the Council may direct the Disciplinary Committee to reopen and continue the inquiry concerned and the Disciplinary Committee shall do so to the extent that it is necessary to furnish the evidence required.

(4) A member of the Institute whose alleged professional misconduct is the subject shall have no right to be heard by the Registration Committee before it makes a determination under subsection (1).

(5) The Registration Committee shall notify the member of the Institute whose alleged professional misconduct is the subject of the inquiry of its determination under subsection (1).

(6) Subject to section 33, a determination of the Registration Committee under subsection (1) shall be final.

Appeals

33. (1) A person aggrieved by a determination of the Registration Committee under section 32 (1) (d) or (e) may appeal to the High Court against the determination within ninety days of being notified of the determination.

(2) On an appeal the High Court may affirm (with or without variation of the period for which the person concerned is not to be registered or the period for which his practising certificate is

suspended) the determination of the Registration Committee or allow the Appeal.

(3) A determination under section 32 (1) (d) or (e) shall have effect notwithstanding that an appeal is made against the determination, but in the event that the High Court allows the appeal –

(a) section 27 (5) shall have effect in relation to the cancellation of the registration of the member of the Institute; and

(b) the suspension of a practising certificate of the member of the Institute shall cease to have effect.

Rules

34. (1) The Chief Justice may make Rules governing the appeals under Section 33 and provide for the fees to be paid, the scale of costs of an appeal and the procedure to be followed therein.

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

## **PART V – MISCELLANEOUS**

Staff and Protection of  
Institute, etc. from  
Liability

35. (1) The Institute, Registration Committee and the Examinations Board may each employ such persons as are necessary for the discharge of their respective functions.

(2) No liability shall be attached to the Institute, Registration Committee or the Examinations Board, or to any of their respective members, employees or agents for any loss or damage sustained by any person as a result of any act or omission done or made in good faith and without negligence in the performance or exercise, or the intended performance or exercise of any duty or power, imposed or conferred by or under this Act.

Terms and Conditions  
of employment of Staff

36. (1) The terms and conditions of employment of persons employed under section 35 shall be as are respectively determined by the Institute, the Registration Committee and the Examinations Board.

(2) For the purpose of subsection (1) “terms and conditions” include conditions with respect to the duration of employment or with respect to dismissal from employment.

Moneys payable to the Institute and Other Bodies

37. (1) There shall be payable to the Institute, the Registration Committee and the Examinations Board such moneys as are approved by the Council and respective Boards.

(2) The Council may give directions as to the amounts in which, and the times at which, moneys referred to in subsection (1) are to be paid to the Institute, the Registration Committee and the Examinations Board.

Accounts and Audit

38. (1) The Institute, the Examinations Board and the Registration Committee shall each keep proper accounts and proper records in relation to their accounts and shall each prepare in respect of each accounting year a statement of accounts.

(2) The accounts and statements of accounts of the Institute, the Registration Committee and the Examinations Board shall be audited and sent to members.

(3) As soon as the accounts and the statements of accounts of the Institute, the Registration Committee or the Examinations Board have been audited under subsection (2), the Institute the Registration Committee or Examinations Board shall send to the Minister a copy of the statement together with a copy of any report made by the auditor concerned on that statement or any such accounts.

(4) On the written request of the Members the accounts and statements of the Institute, the Registration the Registration Committee or the Examinations Board shall be made available to him or to any person nominated by him.

Offences

39. (1) A person who –

(a) assumes or uses the title or designator letters referred to in section 4 (2) (a) and who is not a fellow of the Kenya Institute of Human Resource Management; or

(b) assumes or uses the title or designator letters referred to in section 4 (2) (b) and who is not a member of the Institute of Human Resource Management;

- (c) Assumes or uses the title Honorary Fellow of the Institute of Human Resource Management and who is not such an Honorary Fellow;
- (d) assumes or uses the title Associate Member of Institute of Human Resource Management and who is not such;
- (e) assumes or uses the title Affiliate Member of Institute of Human Resource Management and who is not such;
- (f) assumes or uses the title Corporate Member Institute of Human Resource Management and who is not such

shall be guilty of an offence.

(2) a corporate body (whether incorporated in Kenya or elsewhere) which uses any of the titles or designator letters referred to in section 4(2) or 4(2) (b) shall be guilty of a offence.

(3) Where a firm –

- (a) uses a title or designator letters referred to in section 4(2) (a) and each of the partners in the firm is not entitled to use the titles or designator letters; or
- (b) uses a title or designator letters referred to in section 4(2) (b) and each of the partners in the firm is not entitled to use the titles or designator letters each of the partners of the firm shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable to a fine not exceeding ten thousand shillings, together with a further fine not exceeding four thousand shillings for each day on which the offence continues.

Vacancy in  
Membership

40. The Council, the Registration the Registration Committee or the Examinations Board may exercise and perform its functions notwithstanding any vacancy among the members and the validity of any proceedings of the Council or either Board shall not be affected by any such vacancy or any defect in the appointment of a member.

Regulations

41. The Council and Examinations Board may make regulations prescribing anything which is required to be or which may be prescribed under this Act, and for carrying out or giving effects to this Act.

Responsibility  
employers

of 42. (1) Any person employing 50 persons or more shall be bound to have also in his employ a Human Resources Profession to deal with the functions which are required to be done by Human Resources Professional under this Act or other law.

(2) A person who procures a Human Resources Professional to act contrary to the provisions of this Act or any other law shall be guilty of an offence and shall, without prejudice to punishment prescribed by any other law, be subject to the same punishment as would be suffered by the Human Resources Professional in question;

Provided that where such a person is not a recognized Human Resources Professional, he shall not be subject to the disciplinary measures under the Disciplinary Committee.

(3) A Human Resources Professional shall, as a defence to any action against him or as a ground of claim, refer to this Act to aid his case.

**MEMORANDUM & OBJECTS OF THE BILL**

This legislation has been developed with the realization that Human Resource management Practice is a profession that lacks any regulations thus leading to low quality of standards and unprofessionalism by many practitioners. This Bill seeks to among others establish the Institute of Human Resource Management as the overall organ of the HRM professionals, to regulate practice and conduct of HR Professionals, to promote and maintain high standards and esteem of the HR profession, to provide for the examination and registration of HRM Professionals, to deal with the disciplinary conduct of HR professionals and to improve the quality of service rendered and protect clients and the general citizenry from incompetent and unqualified people practicing as Human Resource practitioners.

## **FIRST SCHEDULE**

### **IN THE INSTITUTE – CHAIRMAN OF THE INSTITUTE**

1. (1) There shall be an Annual General meeting of the Institute where a person shall be elected to the office of the Chairman. The tenure of the Chairman shall be 3 years.  
  
(2) Unless he earlier vacates the office, a person elected to the office of chairman holds office until another chairman is elected.  
  
(3) A person who holds the office of chairman is eligible for re-election only once.  
  
(4) A person who holds the office of chairman may resign the office by writing under his hand delivered to the Council.
  
2. (1) When the Chairman leaves office through resignation or otherwise, the Vice Chairman will take over until next Annual General meeting.  
  
(2) In case where the Vice Chairman is unable to take office, the Council shall appoint a person to act as Chairman.  
  
(3) The Council under resolution may revoke the appointment of a person to act as Chairman.  
  
(4) The appointment of a person to act as chairman ceases to have effect –
  - (a) if made during a vacancy in the office of chairman, when the vacancy ends by the election of a chairman.
  - (b) if the person appointed resigns the office by writing under his hand delivered to the Council
  - (c) if the Council revokes the appointment under subparagraph (2).

### **MEETINGS OF THE INSTITUTE**

3. An Annual General Meeting of the Institute shall be held not later than six months after the end of each year.

4. A special general meeting of the Institute -

(a) may be held at any time; and

(b) shall be held on a written request made to the Council and signed by not less than 30% of the total membership of the Institute.

5. (1) A meeting of the Institute shall be convened by the Council by giving to every member of the Institute a written notice -

(a) stating the place where, and the day and hour when, the meeting is to be held; and

(b) indicating the business which it is proposed to transact at the meeting.

(2) Notice of a meeting shall be given not less than fourteen days before the date on which it is to be held to each member of the Institute by posting the notice to the address of the member in person.

(3) The validity of any proceedings of the Institute shall not be affected by any failure to comply with the requirement of sub-paragraph (2) unless it is proved that the failure so to comply in relation to any member was a deliberate failure.

6. (1) The chairman shall preside at all meetings of the Institute at which he is present.

(2) At a meeting of the Institute at which the chairman is not present, the vice-chairman of the Council shall preside.

(3) At a meeting of the Institute at which neither the chairman nor the vice-chairman of the Council is present, the members of the Institute present at the meeting shall elect one of their members to preside.

7. (1) Subject to this paragraph, the quorum at a meeting of the Institute shall be at least 30% of the total membership of the Institute.

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

(a) otherwise than pursuant to paragraph 4 (b) and a quorum is not present when the meeting proceeds to business, the meeting shall stand adjourned until the same day on the following week, at the same time and place, and if a quorum is not present fifteen minutes after that time, the members present at the first meeting and any other if any shall constitute a quorum; or

(b) pursuant to paragraph 4 (b), and a quorum is not present when the meeting proceeds to business the meeting shall be dissolved.

8. (1) No business shall be transacted at a meeting of the Institute unless -
- (a) the business is indicated in the notice of the meeting as business which it is proposed to transact; or
  - (b) in the case of business not to indicated, the meeting decides to transact the business and the person presiding at the meeting agrees to the transaction of the business.
- (2) Minutes of the proceedings at meetings of the institute shall be kept in such manner as the chairman or in his absence the person presiding at a particular meeting, directs.
9. The person presiding at a meeting of the Institute may adjourn the meeting from time to time and from place to place, with the consent of the meeting.
10. The person presiding at a meeting of the Institute may limit the number of persons permitted to speak in favour of or against any motion and the time any such person may speak.
11. (1) Questions arising at a meeting shall be determined by a majority of the members of the Institute voting on the question.
- (2) Voting on any question shall be by a show of hands unless, before the declaration of the result of the voting on a show of hands, a ballot is demanded –
- (a) by the person presiding at the meeting; or
  - (b) by at least 20% of the members of the Institute present, in which event the question shall be determined by a ballot taken in such manner as the person presiding at the meeting directs.
- (3) Where a ballot is held voting may be either done personally or by written proxy.
- (4) An instrument appointing a proxy shall be in writing and shall be deposited with the secretary to the Council not less than forty-eight hours before the meeting of the institute at which it is to be used.
- (5) A proxy to be used in any ballot at any meeting may be used at the meeting or, if the meeting is adjourned, in any ballot when the meeting is resumed after the adjournment but the holding of a proxy shall not be counted towards the quorum at any stage of any meeting.
- (6) The person presiding at a meeting of the Institute shall have a deliberative vote, and, in the event of an equality of votes, a casting vote.
- (7) A declaration by the person presiding at a meeting of the Institute that a resolution has or has not been carried and an entry to that effect in the minutes of the meeting shall be evidence of that fact.

**SECOND SCHEDULE (S.8 (4) ).**

**THE COUNCIL – MEMBERS OF THE COUNCIL**

1. (1) Each of the nine members of the Council (one of whom shall be the vice-chairman) referred to in section 9 (b) of the Act and shall serve on a three year term.
- (2) Subject to paragraph 2 of this Schedule, a member of the Council –
  - (a) elected pursuant to subparagraph (1);
  - (b) appointed pursuant to section 9 (d) of the Act; or
  - (c) co-opted pursuant to subparagraph (3);
  - (d) representatives of the Federation of Kenya Employers and Central Organization of Trade Unions.

holds office for the prescribed period, unless he earlier ceases to hold office.

- (3) Subject to subparagraph (4), where a member of the Council (including a member co-opted pursuant to this subparagraph) ceases to hold office before the expiration of the prescribed period or otherwise than under the provisions of paragraph 2 (where applicable) the Council may co-opt a person to hold that office.
- (4) Subparagraph (3) does not apply to the member of the Council appointed pursuant to section 10 of the Act.
- (5) In this paragraph the “prescribed period” means –
  - (a) in relation to a member referred to in subparagraph (2) (a) the period beginning with his election and ending at the commencement of the day on which the third annual general meeting after his election is to be held;
  - (b) in relation to a member referred to in subparagraph (2) (b) the period of three years next following his appointment; or
  - (c) in relation to a member referred to in subparagraph (2) (c) the period beginning with his being co-opted and ending at the commencement of the day on which the first annual general meeting after his being co-opted is to be held.

2. Of nine members of the council (including the Vice Chairman) first elected by the Institute after the commencement of this Act –
  - (a) three (identified by agreement of members of the council or by lot) shall cease to hold office at the commencement of the day on which the second annual general meeting of the council is to be held, save in the case of any such member who earlier ceases to hold office;
  - (b) three (so identified) shall cease to hold office at the commencement of the day on which the third annual general meeting of the council is to be held, save in the case of any such member who earlier ceases to hold office; and
  - (c) the remaining three members shall cease to hold office at the commencement of the day on which the fourth annual general meeting on the council is to be held, save in the case of any such member who earlier ceases to hold office;
3. A member of the Council may resign from the office by writing under his hand and delivered –
  - (a) in the case of the member appointed pursuant to section 9(d) of the Act, to the Minister; or
  - (b) in the case of any other member, to the Council.
4.
  - (1) Subject to paragraph 1 (3), where a member of the Council ceases to hold office a member shall be elected to fill the vacancy at the annual general meeting of the Institute next following, or shall be appointed by the Minister, as the case may be.
  - (2) A member of the Council who ceases to hold office is eligible for re-election or re-appointment.
5. Paragraph 1,2,3 and 4 do not apply to the Chairman.

#### **VICE CHAIRMAN OF THE COUNCIL**

6.
  - (1) There shall be a Vice-chairman of the Council who shall be elected by the Council from amongst the members of the Council.
  - (2) The Vice-Chairman shall hold office for the period of one year.
  - (3) Subject to paragraph 2 of the First Schedule, the Vice Chairman may exercise and perform the functions of the Chairman if the Chairman is unable to exercise and perform those functions.
7. The quorum at meetings of the Council and the arrangements related to meetings of the Council shall be such as the Council may determine.

8. The person presiding at the meeting of the Council has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.
9. Minutes of the proceedings of the Council shall be kept in such manner as the Council directs, and, on the written request of the Minister, shall be made available to him or any other person nominated by him.

**THIRD SCHEDULES (S. 11 (4)).**

**THE REGISTRATION COMMITTEE – MEMBERS OF THE REGISTRATION COMMITTEE**

1. (1) A member of the Registration Committee shall hold office for a three year period following his appointment, unless he earlier ceases to hold the office.  
  
(2) Member of the Registration Committee may resign the office by writing under his hand delivered to the Council.  
  
(3) Member of the Registration Committee who ceases to hold the office is eligible to be re-appointed.

**CHAIRMAN AND VICE-CHAIRMAN OF REGISTRATION COMMITTEE**

2. (1) The Council shall appoint from amongst the members of the Registration Committee a Chairman and a Vice-Chairman of the Committee.  
  
(2) The Chairman or the Vice- Chairman of the Registration Committee shall hold his office as member of the Registration Board or until he resigns the office under subparagraph (3).  
  
(3) The Chairman or the Vice-Chairman of the Registration Committee may resign by writing under his hand addressed to the Council.

**PROCEEDINGS**

4. The quorum at meetings of the Registration Committee and the arrangements relating to the meetings shall be such as the Registration Committee may determine.
5. The person presiding at a meeting of the Registration Committee has a deliberate vote, and, in the event of any equality of votes, also has a casting vote.
6. Minutes of the proceedings of the Registration Committee shall be kept in such manner as the Committee directs.

**FOURTH SCHEDULE (S. 14 (4))  
THE EXAMINATIONS BOARD – MEMBERS OF THE EXAMINATIONS BOARD**

1. (1) A member of the Examinations Board shall hold office for the period of two years next following his appointment, unless he earlier ceases to hold office.
- (2) A member of the Examinations Board may resign the office by writing under his hand delivered to the Minister.
- (3) A member of the Examination Board who ceases to hold office is eligible for re-appointment.

**CHAIRMAN AND VICE CHAIRMAN OF  
EXAMINATIONS BOARD.**

2. (1) The Minister shall appoint from amongst the members of the Examination Board a Chairman and a Vice-Chairman of the Board.
- (2) The Chairman and the Vice-Chairman of the Examination Board shall hold office until he ceases to hold office as a member of the Examinations Board or until he resigns the office under subparagraph (3).
- (3) The Chairman or the Secretary of the Examinations Board may resign his office by writing under his hand addressed to the Minister.

**PROCEEDINGS**

3. The quorum at meetings of Examinations Board and the arrangements relating to meetings shall be such as the Examinations Board may determine.
4. The person presiding at a meeting of the Examinations Board has a deliberative vote, and, in the event of any equality of votes, also has a casting vote.
5. Minutes of the proceedings of the Examinations Board shall be kept in such manner as the Board directs, and, on the written request of the Minister shall be made available to him or to any other person nominated by him.

**FIFTH SCHEDULE – (S. 30 (2)).**

**PROCEEDINGS ON INQUIRY**

1. (1) The Council shall cause a statement to be prepared setting out the allegation of professional misconduct to be investigated by the Disciplinary Committee.  
  
(2) The Secretary to the Council shall transmit to each member of the Disciplinary Committee and to the person whose conduct is the subject of investigation a copy of the statement prepared pursuant to subparagraph (1).
2. (1) The Secretary to the council shall give notice of the first date, time and place fixed for the inquiry to the person whose conduct is subject to investigation.  
  
(2) Every such notice shall, at least fourteen days before the first date fixed for the inquiry, be delivered to the person whose conduct is the subject of investigation by hand or be sent to him through the post by registered letter addressed to his address last known to the Council.  
  
(3) Where a person whose conduct is the subject of investigation fails to appear either personally or by his advocate at the time and place fixed in the notice served on him, the inquiry may proceed in his absence.  
  
(4) Notice of the adjournment of an inquiry shall be given to the person whose conduct is the subject of investigation in such manner as the Disciplinary Committee determines.
3. (1) A person whose conduct is the subject of investigation may appear at the inquiry either personally or by his advocate.  
  
(2) The Institute may appear at the inquiry by an advocate.
4. (1) For the purpose of the conduct of inquiry the Disciplinary Committee has power –
  - (a) to administer oaths;
  - (b) to summon persons to attend and give evidence; and
  - (c) to order the production of relevant documents, including court judgments, if any.  
(2) An oath may be administered by any member of the Disciplinary Committee or by the secretary to the council.
5. (1) Subject to this Schedule, on the inquiry –
  - (a) the procedure to be followed is within the discretion of the Disciplinary Committee; and
  - (b) the Disciplinary Committee is not bound by the rules of evidence.

- (2) Unless the Disciplinary Committee otherwise determines, the proceedings on the inquiry shall be held in camera.
- (3) The secretary to the council shall keep or cause to be kept a record of the proceedings on the inquiry.
6. (1) The decision of the Disciplinary Committee on the inquiry is that of the majority of the members present and voting for the purpose of making a decision.
- (2) For the purposes of making the decision on the inquiry every member of the Disciplinary Committee has one vote, and, in the event of an equality of votes, the Chairman of the Disciplinary Committee also has a casting vote.
7. The validity of proceedings on the inquiry is not affected by any vacancy among the members of the Disciplinary Committee or any defect in the appointment of a member.
8. (1) A person served with summons to appear as a witness at the inquiry who, without reasonable excuse, fails to attend as required by the summons, shall be guilty of an offence.
- (2) A person appearing as a witness at the inquiry who, without reasonable excuse,
- (a) refuses or fails to be sworn;
- (b) refuses or fails to answer a question that he is required to answer by the chairman of the Disciplinary Committee; or
- (c) refuses or fails to produce a document that he was required to produce by a summons under this Act, served on him, shall be guilty of an offence.
- (3) A person guilty of any offence of this paragraph shall be liable to a fine not less than thirty thousand shillings.
9. (1) A member of the Disciplinary Committee has, in the performance of his duty as a member, the same protection and immunity as a judge.
- (2) A person appearing before the Disciplinary Committee at the inquiry on behalf of the person whose conduct is the subject of investigation has the same protection and immunity as an advocate has in appearing for a party in proceedings in the High Court.
- (3) A person summoned to attend or appearing before the Disciplinary Committee as a witness at the inquiry has the same protection, and is, in addition to the penalties provided by this Schedule, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the High Court.
10. Proceedings on the inquiry shall be deemed to be judicial proceedings for the purpose of Chapter XI of the Penal Code.