

MARKETING SOCIETY OF KENYA BILL, 2022

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A BILL FOR

AN ACT of Parliament to provide for the establishment of the Marketing Society of Kenya and the Marketing Society of Kenya Examinations Board, to provide for their objects and functions; to provide for the examination, registration, regulation of standards of practice and for connected purposes.

ENACTED by the Parliament of Kenya, as follows:

PART I

Short title

1. This Act may be cited as the Marketing Society of Kenya Act, 2022 and shall come into operation in accordance with the Constitution.

PART II: ESTABLISHMENT OF THE MARKETING SOCIETY OF KENYA

2. (1) There is established a society to be known as the Marketing Society of Kenya.

(2) The Society shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of -

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, developing or disposing of movable and immovable property;
- (c) borrowing or raising money;
- (d) investing and dealing with monies of the Society not immediately required in such manner as may from time to time be determined by the Society;

and

- (e) doing or performing all such other things or acts, which may, lawfully, be done by a body corporate.

(3) The Society shall be the successor of the Marketing Society of Kenya previously established as a society, and subject to this, all rights, duties, obligations, assets and liabilities of the Marketing Society of Kenya existing at the commencement of this Act shall be automatically and fully transferred to the Society and any reference to the Marketing Society of

Kenya in any contract or document shall for all purposes be deemed to be a reference to the Society established under subsection (1).

(4) The Headquarters of the Society shall be in Nairobi, but the Society may establish offices at any place in Kenya.

Functions and Objects of the Society

3. The functions and objects of the Society are to:
- (a) establish, monitor and publish the standards of professional competence and practice amongst marketing professionals including those on the online and digital marketing platform;
 - (b) register persons who meet the required professional and ethical standards;
 - (c) promote research in marketing practice and related matters;
 - (d) publish books, periodicals, journals and articles on marketing;
 - (e) promote the interests of members of the Society and to do all such lawful things as may appear to promote or protect, directly or indirectly, the interests of members, including supporting or, as the case may be, influencing the enactment of legislation that is favorable to the interests of the Society, and to liaise and consult with relevant government authorities on matters of concern to the Society.
 - (f) provide a medium for communication and exchange of information, knowledge and ethical standards for those persons engaged in the field of marketing practice, including online and digital marketing;
 - (g) network with regional and international related bodies to promote and develop progressive marketing practice standards;
 - (h) hold examinations and prescribe tests of competency deemed appropriate to qualify for membership and certification by the Society;
 - (i) advise the Examinations Board on matters relating to examination standards and policies;
 - (j) advise the Membership Committee on matters relating to registration;
 - (k) regulate the practice, competence and professional conduct of marketing professionals including in the online and digital platforms;
 - (l) promote inter-professional collaboration with other professional bodies;
 - (m) create and maintain a spirit of co-operation, support and mutual goodwill among members of the Society;
 - (n) actively participate in activities of interest to the Society organized by other organizations;
 - (o) collect or raise funds for any purpose and in any lawful manner, and to accept donations and bequests, and to acquire either by purchase, exchange, hire, lease or otherwise, any movable or immovable property, and to sell, let, mortgage or otherwise deal with or dispose of movable or immovable property or other assets of the Society, or use such property for such purpose as the members may approve, and to borrow,

- invest, lend, subscribe or donate money for any purpose beneficial to the Society;
- (p) formulate rules and regulations of conduct to be adhered to by the members of the Society and to do such other things as may be conducive to the attainment of the aims and objectives of the Society;
 - (q) ensure the standardization of learning, learning content, quality assurance, and continuous professional development;
 - (r) promote robust professional practice, consumer protection and cater for best interest of the public in the services provided by members of the Society;
 - (s) create a data-base with full information about certified marketing professionals registered with the Society;
 - (t) do all such other things as are incidental to the foregoing functions under this Act or any other law.

General Powers of the Society

- 4. The Society shall have the powers to do all things necessary for the proper and effective achievement of its objects and the performance of its functions.

PART III: MEMBERSHIP OF THE SOCIETY

5. Membership of the Society

- 1. Membership of the Society shall be open to individuals or corporate bodies responsible for marketing and communication functions. This will entail marketing, public relations, communications and sales.
- 2. There shall be different tiers of membership, which shall include:
 - (a) Corporate membership:
 - (b) Individual membership

3. Corporate Membership

This category shall include companies and institutions that are involved in the field of marketing or any business falling within any of the following categories:-

- i. Marketing;
- ii. Advertising;
- iii. Media owners;
- iv. Market research;
- v. Media buying;
- vi. Public relations;
- vii. Professional marketing services;
- viii. Societies, clubs, associations and other organizations.

4. Individual Membership

Individual members of the Society shall consist of:

- i. Any person who is qualified by way of university marketing degree and/or professional marketing qualification and/or the equivalent from another institute recognized by the Council;
- ii. Any person who has the relevant experience and is actively engaged in a marketing role and having a qualification and/or the equivalent from another learning institution recognized by the Council together with a minimum of three years marketing experience and influencing marketing management.
- iii. Individuals having an established academic interest in marketing, or who have qualified under such examination as may be provided for by the Council and approved by the General Meeting;
- iv. Diplomatic personnel performing at their missions any work of a commercial nature;
- v. Marketing students in various institutions of higher learning;
- vi. Persons providing professional marketing services;
- vii. Any other person who is qualified under this Act.

5. Provisional Membership of the Society

The provisional membership of the Society shall consist of:

- i. Any person who is studying marketing, considering a career in marketing or engaged in a marketing role hereby referred to as Affiliate Members.
- ii. Any person with a minimum of 3 years work experience in marketing and influencing marketing management or has recently graduated with a degree in marketing hereby referred to as Associate Member.

6. Full Membership of the Society

Full membership shall only be open to those are employed in a marketing related role and have met one or more of the following criteria:

- i. Completion of a professional postgraduate diploma in marketing qualification or the equivalent from another learning institution acceptable to the Council, together with five years of marketing experience at management level; or
- ii. Completion of a bachelor's degree and over three years' experience
- iv. Experience only working at an operational level influencing marketing strategy for ten years with seven years at management level; or
- v. Marketing education gained from completion of the professional post-graduate diploma in marketing qualification or the equivalent from another learning institution acceptable to the Council or Committee, together with two years' experience teaching a marketing course and/or three years of practical marketing consultancy experience.

7. Recognition Categories

1. Recognition shall be available to full members who the Society may recognize as having made tremendous contributions to the field of marketing in Kenya and beyond.
2. The Council may nominate any person whom it considers fit to so honor to be a recognized member of the Society for life.
3. Recognition will be in two tiers namely, Warrior Marketing Society of Kenya and Fellow Marketing Society of Kenya, with guidelines as here under listed.

8. Warrior of the Marketing Society of Kenya

(1) A person is qualified for nomination as a warrior if he:

- (a) Has successfully completed professional postgraduate diploma or a Master's degree in marketing, together with ten years in a senior marketing management position; or
- (b) Successfully completed professional postgraduate diploma in marketing qualification or an equivalent qualification acceptable to the Council and holding the position of master's degree, or an equivalent position acceptable to the Council, for a period of at least five years; or
- (c) Has fifteen years significant marketing experience with five years at, or close to, management level with a master's degree in marketing, or

- (d) Has fifteen years significant marketing experience in a marketing consultancy with five years as a senior consultant, or close to management level with a master's degree in marketing.
2. Long membership of the Society and or service in the Council will be an added advantage.
 3. Warriors will retain their full member status and pay subscriptions as appropriate.
 4. The roles of warriors will be as spelt out by the Council.
 5. Warriors will be nominated by fully paid-up members and shall be appointed by the Council.
 6. The Council shall nominate a minimum of two and a maximum of four warriors each year.

9. Fellow of the Marketing Society of Kenya

1. A person will be qualified for nomination as a Fellow if he has all the qualifications for a Warrior together with the following additional criteria:
 - a. An additional 10 years in marketing practice; or
 - b. Has successfully completed professional postgraduate diploma or a doctorate degree in marketing, together with ten years in a senior marketing management position; or
 - c. an equivalent qualification acceptable to the Council and holding the title of doctorate, or an equivalent position acceptable to the Council, for a period of at least five years; or
 - d. fifteen years significant marketing experience in a marketing consultancy with five years as a senior consultant, or close to, management level and holding the title of doctor, or an equivalent position acceptable to the Council, for a period of at least five years.

10. Honorary Membership

The Council may elect any person whom it considers fit to so honour, to be an honorary member of the membership Society either for life or for such period as the Council may specify.

11. Regulations for Non-practicing Members

The Council may make Regulations prescribing matters relating to non-practicing members that may be necessary for the promotion of the objects and the regulation of the affairs of the Society.

12. Membership Rights and Duties

The members of the Society shall have the following rights and duties-

- (a) a paid-up member with a practicing certificate shall have all rights of a member;
- (b) a non-practicing member shall have all the rights except that such member shall have no right to practice or vote or vie for office in any election or matter;
- (c) a honorary member shall have all rights of a member but shall have no right to practice or vote or vie for office in any election or matter;
- (d) a paid-up member other than a honorary and non-practicing member shall have the right to-
 - i. vote at any election of the Society or on any matter of the Society;
 - ii. vie for any office of the Society;
 - iii. vie for any office of the Society;
 - iv. be nominated by the Society to any Constitutional or statutory body.

13. Termination of Membership

- (1) Any member of the Society, other than an honorary member, may be suspended or expelled from the Society upon such grounds as are set out in the enabling rules.
- (2) A person shall not be suspended or expelled from membership of the Society unless the person has been given reasonable opportunity to answer all allegations made against him or her.
- (3) The regulations regarding the manner and the grounds upon which a member may be suspended or expelled from the Society shall be made in consultation with the Chief Justice and shall be subject to this Act.
- (4) A person who has been expelled from membership of the Society shall not be re-admitted as a member of the Society without the authority of a special resolution.

15. Non-member to Cease Practice, etc.

A member who is suspended or expelled from the Society shall, from the date of suspension or expulsion, cease to be qualified to practice as a certified marketing professional and if such a member holds a practicing certificate, the practicing certificate shall where the member is-

- (a) suspended, be suspended for the duration for which that person suspended; or
- (b) expelled, cease to be valid.

PART IV GOVERNANCE OF THE SOCIETY

Organs of the Society

- 6. For the effective governance of the Society there shall be the following organs of the Society-
 - i. The General Meeting
 - ii. The Council
 - iii. The Secretariat
 - iv. The Committees

7. The General Meeting

- 1. The general meeting shall be the supreme authority of the Society which shall approve all resolutions and important decisions of the Society.
- 2. The general meeting may make any decision through a resolution and such decision shall be binding on all members and shall supersede all decisions previously made.
- 3. The general meeting shall consist of all the members of the Society.
- 4. The secretary shall be the Secretary to the general meeting.
- 5. The expenses of the annual general meeting shall be defrayed from the general funds of the Society.
- 6. The Annual General Meeting shall be held on or before the 31st of March each year.

7. Ordinary General Meeting

(1) The Council shall convene an ordinary general meeting of the Society in the month of March of every year at such venue as may be determined by the Council.

(2) The Council shall present to the ordinary general meeting a full report of the activities of the Society in the period immediately preceding year.

8. Notice in writing of such Annual General Meetings, accompanied by the annual statement of accounts and nominations papers for office bearers and Council members and the agenda for the meeting shall be sent to all members not less than twenty-one (21) days before the date of the meeting.
9. The agenda for an Annual General Meeting shall consist of the following:-
 - (a) Confirmation of the minutes of the previous Annual General Meeting
 - (b) The President's Report
 - (c) Consideration of the Accounts
 - (d) Election of office bearers where necessary by lapse of time
 - (e) Appointment of auditors
 - (f) Such other matters as the Council may decide as to which notice shall have been given in writing by any member or members to the Society at least twenty ones (21) days before the day of the meeting.
10. The quorum for any general meeting shall be not less than one-third of the fully paid-up members of the Society, together with the President, or in his absence, the Vice President.
11. The quorum of the General Meeting shall be at least five percent of all the members of the Society.
12. The President of the Council shall preside at the General Meeting and in the absence of the President, the Vice-president shall preside at the meeting.
13. In the absence of both the President and the Vice president, the Council shall nominate one among its members to preside.
- 14. Resolutions of the Society**
 1. Except for any purpose for which a special resolution is required, resolutions shall be decided by secret ballot or by a show of hands.
 2. Resolutions shall be approved if supported by a simple majority of the members present.
 3. In the event of an equality of votes, the President shall have a second or casting vote.
 4. In this Act a "special resolution" means a resolution passed by not less than two-thirds of such members of the Society as may be present and vote thereon at a General Meeting of the Society, duly convened with notice of the intention to propose such resolution.

8. Special General Meeting

1. A Special General Meeting may be called for any specific purpose by thirty (30) days written notice given by the Council or may be requisitioned for any specific purpose by thirty (30) days written notice to the Secretary given by not less than twelve (12) full, individual or corporate members of the Society.
2. Copies of notices of Special General Meeting shall be sent to all members so as to reach them not less than seven days before the meeting.
3. The business to be transacted at a Special General Meeting shall be restricted to the agenda given in the notice.
4. If the Council fails, within fourteen days after the requisition, to convene a Special General Meeting in accordance with the requisition, and specifying that it shall be held within thirty days, the members may themselves convene that Special General Meeting to be held at any time within two months after such requisition.

9. Convening and Procedure of Meetings.

Subject to the provisions of this Act, the manner of convening general meetings of the Society and the procedure at a general meeting shall, be as may be prescribed, from time to time, by the Council.

10. Voting

Every member present at a general meeting of the Society shall have one vote, and the President of that Council shall also have a casting vote.

11. Voting Procedure

Subject to the provisions of this Act, the procedure of voting at the general meetings, shall, be as may be prescribed, from time to time, by the Council.

12. Minutes of Proceedings

The Council shall cause proper minutes of all meetings of the Council and of the general meeting to be taken and recorded.

13. The Council

1. The management of the Society shall vest in the Council which shall comprise of:
 - (a) the President;
 - (b) Vice-president

- (c) three representatives of the general membership of the Society, one being of a minimum of two years experience and two being of at least ten years of working experience;
 - (d) three representatives of corporate members;
 - (e) one associate member nominated by the Council;
 - (f) one student representative nominated by the Council
 - (g) the Secretary who is the Chief Executive Officer of the Society and appointed by the Council
 - (h) The Treasurer who shall have accounting background and appointed by the Council after it is constituted.
 - (i) One government nominee appointed by the ministry in charge of the marketing docket.
2. The members of the Council shall be elected by all the members of the Society in accordance with this Act.

14. Eligibility for election as a member of the Council.

1. A person is eligible for election as the President or Vice-president if the person-
- (a) is a member or former member of the Council: or
 - (b) has been a registered and practising member of the Society for at least fifteen years.
2. A person is eligible for election as a member of the Council if the person-
- (a) is a member of the Society;
 - (b) subject to section 13 above, has been in practice for at least two years from the date of registration;
 - (c) has not been found liable for professional misconduct by the Disciplinary Committee established by this Act, in the three years immediately preceding the election; and

15. Election of Members of Council

1. The election of the president, vice-president and members of the Council shall be-
- (a) conducted in a transparent and fair manner;
 - (b) in the second Annual General Meeting after the election of the Council;
 - (c) by secret ballot;
 - (d) conducted on the same day by the members physically present.

2. Supervision of Elections

- The elections for the membership of the Council shall be conducted by such body as the Council may propose and approved by the general meeting preceding the election.
3. Nominations for the election of office bearers and Council members shall be in such form as the Council may prescribe from time to time and shall be communicated to members at least ninety (90 days) before the date of the Annual General Meeting at which the elections are to be held.
 4. Voting for any contested position shall be by secret ballot and the candidate gaining the greater number of votes shall be declared elected. In case a tie, a rerun will be held. If the tie persists, the contestants will be invited to agree. If the tie still persists the matter may be settled by the toss of a coin administered by the chairman.
 5. The Secretary shall notify all members of the date of the Annual General Meeting not less than 21 days before the said date.
 6. In the event of a Council position not attracting any valid nomination, verbal nominations, duly seconded by members present, shall be accepted at the Annual General Meeting and the person nominated and seconded shall be deemed duly elected.

16. Assumption of Office

1. The President, the Vice-president and the members of the Council shall assume office immediately after the ordinary General Meeting of the Society next following an election of the members Council, and shall hold office for a period of two years, ending at the conclusion of the annual general meeting held in the second year, after their election.
2. A person who has been elected as President shall serve for two terms and shall not be eligible for election for another term.
3. A member of the Council can hold office for more than two terms.
4. Where the President, the Vice-president or member of the Council dies, resigns or is removed from office before the expiry of the term of office, the vacancy created shall be filled in such manner as provided in the regulations.

17. Removal from Office

1. The President, the Vice-president and a member of the Council may be removed from office by a general meeting by a vote of at least two thirds of all members present and eligible to vote on grounds of-
 - (a) inability to perform the functions of office arising from mental or physical infirmity;
 - (b) suspension or expulsion as provided under the Act;
 - (c) bankruptcy; or
 - (d) failure to attend four consecutive Council meetings, without reasonable grounds acceptable to the Council.
2. Before removal under subsection (1), the President, the Vice-president and the member of the Council shall be-
 - (a) informed of the reasons for the intended removal, in writing;
 - (b) given an opportunity to put in a defence against any allegations, either in person or through an advocate.

18. Resignation from Office

1. An office bearer's position shall become vacant if the occupant tenders a written notice of resignation to the Secretary.
2. Where the office of a Council member becomes vacant by reason of resignation, such vacancy shall be filled by election in a general meeting which election shall be governed by the provisions hereinbefore set out.

19. Conduct of business of Committees of the Council

1. The conduct of proceedings of the Council, and of every committee of the Council, shall be as may be prescribed from time to time by the Council.
2. The Council may establish such committees consisting of members of the Council as it may consider necessary for the discharge of its functions.
3. The Council may, by resolution, engage any person who is not a member of the Council to provide such expertise as may be required for the

better discharge of its functions, and the attainment of the objects, of the Society.

20. Functions of the Council

1. The functions of the Council are:
 - a. to be responsible for formulation of policy guidelines and general oversight.
 - b. approve all business plans and budgets made by the relevant Committees.
 - c. exercise oversight over all activities of the Society.
 - d. carry out any such function as necessary and incidental to the fulfilment of its mandate under this Act.
2. The Council may, on the advice of the Secretary, engage on behalf of the Society, the services of experts and consultants in respect of any of the functions of the Institute in connection with which they are considered to have special competence.
3. The Council may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act or under any other written law.
4. The members of the Council shall be paid such fees, allowances and disbursements for expenses as may be determined by the Council from time to time.

5. Business and conduct of affairs of the Council

1. The conduct and regulation of the business and affairs of the Council shall be as provided in the Rules enacted pursuant to this Act.
2. Except as provided in the Rules, the Council may regulate its own procedure.
3. The quorum for conducting business of the Council shall be seven members.

PART V THE SECRETARY AND THE SECRETARIAT

21. The Secretary/CEO

1. There shall be a secretary to the Council who shall be the chief executive officer of the Society and in charge of the secretariat of the Society.
2. The secretary shall be appointed by the Council through a transparent and competitive recruitment process
3. The terms and conditions of service shall be determined by the Council in the instrument of appointment or otherwise in writing from time to time.
4. The secretary shall be -
 - (a) be an ex-officio member of the Council but shall have the right to vote at any meeting of the Council;
 - (b) be the secretary to the Council;
 - (c) subject to the directions of the Council, be responsible for the day-to-day management of the affairs of the Society;
 - (d) carry out the instructions and directions of the Council;
and
 - (e) be responsible to the Council generally for the implementation of this Act.
5. A person shall be eligible for appointment as the secretary to the Society if that person-
 - (a) is a registered member of the Marketing Society of Kenya;
 - (b) has had at least ten years' working experience; and
6. A person appointed secretary shall hold office for a period of three years and shall be eligible for reappointment for a further term of three years renewable.
7. The secretary may be removed from office by the Council with the support of at least two thirds of the members of the Council and on the following grounds-

- (a) inability to perform the functions of office arising from mental or physical infirmity;
 - (b) gross misconduct;
 - (c) bankruptcy;
 - (d) incompetence; or
 - (e) desertion of duty.
8. The Council shall, before removing the secretary under subsection (6)-
- (a) inform the secretary, in writing, of the reasons for the intended removal; and
 - (b) give the secretary an opportunity to put in a defense against any such allegations, either in person or through an advocate.

22. The Secretariat

1. There shall be a secretariat of the Society to be headed by the Secretary/Chief Executive Officer.
2. The secretariat shall be responsible for
 - (a) the day to day running of affairs of the Society;
 - (b) the preparation of annual business plans and budgets;
 - (c) the implementation of approved business plans and budgets;
 - (c) the implementation of all policies passed by the Council; and
 - (d) the recruitment and employment of such officers and workers as the Council may from time to time approve.
3. The secretariat shall from time to time receive such general or specific instructions from the Council through the secretary.

23. Structure of the secretariat

1. The secretariat shall be structured in a manner that promotes the commitment to practice of excellence and client care in the marketing profession.

2. Without prejudice to subsection (1), the secretariat shall consist of the following directorates-

(a) the practice standards directorate which shall be responsible for the promotion of excellence in marketing practice, client care and the achievement of full compliance with the rules of good practice in the marketing profession through advice, support and other forms of assistance to marketers;

(b) the compliance and ethics directorate which shall be responsible for the receipt and evaluation of complaints against marketers and the prosecution of matters before the Disciplinary Committee;

(c) the continuing professional development directorate which shall be responsible for ensuring compliance of members with the relevant regulations;

(d) the public interest directorate which shall be responsible for the identification of public interest issues and matters affecting members of the Society; and

(e) any other directorate that the Council may from time to time deem necessary to establish.

24. Council Committees

1. There shall be Council Committees whose composition and nature shall be determined by the Council.

2. The Council Committees shall be approved by the Council and appointed by the president and may comprise ordinary Society members or Council members.

3. Each committee shall have a maximum of 5 members with the exception of the disciplinary committee.

4. The Committees shall include but not limited to

- a. the Finance and Audit committees
- b. the human resource committee
- c. the membership committee

- d. the ethics and disciplinary committee
 - e. resource mobilization committee
 - f. learning and development committee
 - g. advertisement dispute resolution committee
5. The functions of the Committees are to
- (a) to draft and periodically update policies for the Council approval.
 - (b) to provide technical and professional assistance to the Secretariat.
 - (c) to exercise general oversight in the areas they are mandated.

25. Chapters of the Society.

1. There shall be the following eight Chapters of the Society consisting of the centres set out in the Schedule -

- (a) Coast;
- (b) Rift Valley;
- (c) Nyanza;
- (d) Western;
- (e) Mount Kenya;
- (f) Eastern; and
- (g) Nairobi.
- (h) North Eastern

2. The Chapters shall-

- e. deal with issues regarding practice within their chapters;
- f. address issues relating to the welfare of the members practising in their chapters;
- g. organize engagement activities;
- h. recruit members;
- i. inform the Council of any matters that affect members within the branches that require the Council's engagement with other stakeholders on behalf of the branch.

26. Common Seal of the Society

1. The common seal of the Society shall be kept in the custody of the Secretary or of such other person as the Council may direct and shall not be used except upon the order of the Council.

2. The common seal of the Society, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization' by the Council under this section shall be presumed to have been duly given

27. Liability of Council Members, Officers and Employees

1. No matter or thing done by a member of the Council or by any officer, member of staff, or agent of the Council shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Council under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.
2. Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Council, shall, if the court holds that such act was done bona fide, be paid out of the funds of the Society, if such expenses are not recovered by the person in such suit or prosecution.
3. The provisions of subsection (1) shall not relieve the Society of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

PART VI EXAMINATIONS BOARD

28. Examinations Board

1. There is hereby established a Board to be known as the Marketing Society of Kenya Professionals Examinations Board.
2. The Examination Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-
 - (a) suing and being sued;
 - (b) purchasing, acquiring, holding or disposing of property;

- (c) borrowing money; and
- (d) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done by a body corporate.

3. The Examinations Board shall consist of-

(a) six persons who shall be qualified marketing professionals nominated by the Council, one of whom shall be appointed by the Council from amongst the members of the Society as Chairperson of the Board;

(b) two persons nominated by the Cabinet Secretary of the Ministry for the time being responsible for education, one of whom shall be from Kenya Institute of Education and one from the Kenya National Examination Council;

(c) one person nominated by the Law Society of Kenya;

(d) one person nominated by the Commission for Higher Education.

29. The functions of the Examination Board shall be to—

(a) prescribe and regulate syllabuses of instruction for marketing professionals' examinations;

(b) prepare and conduct examinations for persons seeking registration under this Act;

(c) make rules with respect to examinations;

(d) prescribe the fees and other charges payable with respect to such examinations;

(d) issue certificates to candidates who have satisfied examination requirements;

(e) make rules with respect to examinations;

(f) issue professional qualifying certificates and other awards to candidates who have satisfied examination requirements;

(g) investigate and determine cases involving indiscipline by students registered with the Examination Board;

- (h) promote recognition of its examinations locally and internationally;
- (i) remit a proportion of not less than thirty percent of the fees collected under paragraph (d) to the Society to support continuing marketing professional development; and
- (j) do anything incidental or conducive to the performance of any of the preceding functions.

PART VI REGISTRATION OF MARKETING PROFESSIONALS

30. Membership Committee

1. There is hereby established a committee to be known as the Membership Committee.
2. The Committee shall consist of-
 - (a) a chairperson appointed by the Council from amongst members of the Council
 - (b) one person nominated by the Federation of Kenya Employers;
 - (c) one person nominated by the Examination Board;
 - (d) one person nominated by the Kenya National Examination Council; and
 - (e) the Attorney General or his representative designated by him in writing.
3. The functions of the Membership Committee shall be-
 - (a) receive applications for registration and grant practicing certificates in accordance with the provisions of this Act;
 - (b) monitor compliance with professional quality assurance and other standards published by the Council for observance by the members of the Society;
 - (b) prescribe regulations to govern quality assurance programmes, including actions necessary to rectify deviations from standards;
 - (c) where appropriate and based on the results of a quality assurance investigation recommend to the Council that a member's conduct be referred for inquiry under this Act;
 - (d) advise the Council on matters pertaining to professional and other standards necessary for the achievement of quality assurance; and
 - (e) perform any other functions connected therewith or incidental thereto.

4. A person registered under this Act shall be known as the Certified Marketing Professional of Kenya.
5. No person shall use the title Certified Marketing Professional if they are not registered and active members of the Society.

6. Qualification for registration as a marketing professional

1. Subject to the provisions of this Act, a person shall be eligible to be registered as a certified marketing professional if such a person-
 - (a) has paid the prescribed fees;
 - (c) has successfully undergone a prescribed certificate, diploma, degree or research course of instruction and has passed the appropriate examination conducted or prescribed by the Examinations Board under this Act; or
 - (d) has undergone a certificate, diploma, degree or research course of training and passed an examination elsewhere than in Kenya, which the membership committee recognizes as equivalent to the training and instruction required in the case of persons trained in Kenya and as equivalent to the qualifications required under this Act; and
 - (e) holds such other qualifications as the Council may prescribe.
2. The Council may from time to time, by notice in the Kenya Gazette, approve qualifications, which it considers sufficient to allow a person to be registered, and may, in the same manner, withdraw that approval.

31. Disqualification from Registration

1. Subject to this section, a person is disqualified from being registered if the person
 - (a) is convicted by a court of competent jurisdiction in Kenya or elsewhere of any offence involving fraud or dishonesty;
 - (b) is a undischarged bankrupt;
 - (c) is of unsound mind and has been certified to be so by a medical practitioner; or
 - (d) is found by the Council to be guilty of professional misconduct in accordance with this Act; and

32. Registration of Corporate Institutions as Certified Marketers

1. Subject to the provisions of this Act, a person may register a marketing firm as a certified marketer if –

- (a) the firm has a certificate of registration of a business name or certificate of incorporation;
- (b) the firm has at least one partner or principle shareholder who is registered as a certified marketing professional and who has a valid practicing certificate; and
- (c) the person fulfills any other condition as may be stipulated by the Council.

33. Application for Registration

1. A person wishing to be registered as a Certified Marketing Professional shall apply to the Membership Committee.
2. An application under this section shall be made in the prescribed manner and form and shall be accompanied by the prescribed fee.
- (3) Where an application is made by a person in accordance with this section, the Membership Committee shall approve the application if it is satisfied that the applicant meets the requirements specified under section 31.

34. Certificate of Registration

The Membership Committee shall issue to every person registered under this Act a certificate of registration in the prescribed form.

35. Removal of names from the register

1. The Membership Committee may, at any time, direct that the name of a person be removed from the register where such person-
 - (a) is of unsound mind;
 - (b) requests that the name be removed from the register;
 - (c) is convicted of an offence under this Act;
 - (d) has been found guilty and his registration suspended or revoked through disciplinary proceedings under section 34;
 - (e) has failed to renew a membership;
 - (f) is declared bankrupt; and
 - (g) any circumstances arises which, if the member were then a person applying for registration, would disqualify him under section 20 from being registered.

36. Register

1. The Secretary to the Membership Committee shall cause to be kept a register which shall contain —

- (a) the names of persons registered under this Act;
- (b) the names of all persons issued with a practicing certificate;
- (c) particulars of the cancellation of the registration of any person; and
- (d) such other details as the Council may direct

(2) The Secretary to the Membershi Committee shall keep up to date or cause to be kept up to date the register and records required to be kept under or for the proposes of this Act, subject to any directions which may form time to time be issued to him by the Council.

(3) The secretary to the Membership Committee shall remove from the register —

- (a) the names of a deceased person; and
- (b) any entry which has been incorrectly or fraudulently made.

4. The secretary to the Membership Committee shall cause the name and address of every person whose name is removed from the register under this section, to be published in the Gazette within one month from the date of such removal.

(5) Subject to the provisions of this Act, the removal of a person's name from the Register shall be notified by the secretary to the Membership Committee to the person by registered mail addressed to the address appearing in the register against his name immediately before such removal.

(6) Where the name of any person has been removed from the register under this Act, such name shall not be reinstated except by the direction of the Council.

(7) A person whose name has been removed from the register shall cease to be registered for the purpose of this Act from the date of such removal.

37. Correction of Register

The secretary to the Membership Committee shall from time to time make any necessary alteration or correction in the register in relation to any entry therein.

38. Reinstatement to the Register

1. Where the name of any person has been removed from the register, the Council may, either of its own motion or on the application by the person

concerned made in the prescribed manner, and in either case after holding such inquiry as the Council thinks fit, direct that-

- (a) the removal of such person's name from the register be confirmed; or
- (b) the name of the persons be restored in the register.

39. Use of Title

A person registered under this Act shall-

- (a) by virtue of being so registered, be entitled to take and use the title and description of a Certified Marketing Professional of Kenya (CMPK).
- (b) Not take or use, or affix to or use in connection with his premises, any title or description, in addition to that of a certified marketing professional, other than as indicated by the particulars relating to his qualifications entered in the register.

PART VII PRACTICING CERTIFICATE

40. Application for practicing certificate

1. No person shall practice as a certified marketing professional of Kenya unless the person has been issued with a valid practicing certificate.
2. A person wishing to obtain a practicing certificate shall apply to the Membership Committee.
3. An application under this section shall be in the prescribed form and shall be accompanied by the prescribed fee.
4. Where an application is made by a person in accordance with this section, the secretary to the Membership Committee shall issue such a person a practicing certificate if satisfied that the person-
 - (a) is registered under this Act; and
 - (b) meets such other requirements as may be prescribed and if not satisfied, shall refuse the application.
5. A practicing certificate remains in force unless its holder-
 - (a) is removed from the register; or
 - (b) has been suspended under section 36.
6. Where a practicing certificate ceases to be in force under subsection (5), the person to whom the certificate was issued shall deliver it to the Council within thirty days from the date on which he ceases to be registered.

7. Any person who, without reasonable excuse contravenes subsection (6) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings.

41. Continuous Professional Development

1. A person shall only be issued with a practicing certificate if he satisfies the Membership Committee that he has obtained the requisite continuous professional development points.
2. The Council shall determine the number of continuous development points that a person must obtain for the issuance of a practicing certificate.
3. Continuous professional development points shall be awarded by the Council after a registered marketing professional pays and attends the required number of education programs.
4. The minimum number of points to be attained prior to the issuance of a practicing certificate shall be 40 points.

PART VIII DISCIPLINARY PROVISIONS

42. Professional Misconduct

1. A person registered under this Act is guilty of professional misconduct if the person—
 - (a) deliberately fails to follow the laid down professional marketing procedures of his employer or client save those which are in violation of the law;
 - (c) refuses, fails or neglects to apply established professional marketing standards and principles in the course of discharging his professional functions;
 - (d) engages himself in corrupt activities or practices;
 - (e) is guilty of gross negligence in the conduct of his professional duties;
 - (f) engages himself in negative practices such as nepotism, tribalism, racism and other acts of discrimination in the discharge of his professional functions;
 - (g) discloses information acquired in the course of his duties to any person without the consent of his employer or client or otherwise than is required by law;
 - (h) 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;
 - (i) 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 professional;

- (j) is found guilty of fraud or any dishonest act allows any person to practice in his name as a certified marketing professional unless such a person is the holder of a practicing certificate and is in partnership with him or employed by him;
- (k) allows any person to practice in his name as a certified marketing professional unless such a person is the holder of a practicing certificate and is in partnership with him or employed by him;
- (l) enters for the purpose of or in the course of practicing as a certified marketing professional into partnership with a person who does not hold a practicing certificate or secures any professional business through the service of such a person or by means not open to a certified marketing professional;
- (m) pays or allows or agrees to pay or allow directly or indirectly, to any person (other than a person who holds a practicing 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;
- (n) 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;
- (o) 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 not intended; and

43. Disciplinary Committee

1. There shall be a Committee to be known as the Disciplinary Committee.
2. The Disciplinary Committee shall consist of five members appointed by the Council, from among the members of the Council.
3. Members of the Disciplinary Committee shall appoint one of their numbers to be the Chairperson.

44. Reference of matters to the disciplinary committee

Where the Council has reason to believe that a registered person may have been guilty of professional misconduct it shall refer the matter to the Disciplinary Committee which shall inquire into the matter.

45. Inquiry by the Disciplinary Committee

1. Upon inquiry held by the Disciplinary Committee, the person whose conduct is being inquired into shall be afforded an opportunity to be heard in person.
2. For the purpose of proceedings at any inquiry held by the Disciplinary Committee, the Committee may administer oaths, and may subject to any

regulations made under this Act, enforce attendance of persons as witnesses and the production of books and documents.

(3) The Disciplinary Committee shall have power to regulate its own procedure.

46. Powers of the Disciplinary Committee

1. Where, on recommendation of the Disciplinary Committee, the Council is satisfied that a certified marketing professional is in breach of any of the terms or conditions prescribed by the Council under section 27, the Council may-

- (a) issue the certified marketing professional with a letter of admonishment;
- (b) suspend the registration of the certified marketing professional for a specified period not exceeding twelve months;
- (c) withdraw or cancel the practicing certificate of the certified marketing professional for such period not exceeding five years as may be appropriate;
- (d) impose a fine which the Council deems appropriate in the circumstances;
or
- (e) remove the name of the certified marketing professional from the register.

5. The Council shall as soon as practically possible inform the certified marketing professional of the action to be taken against him.

6. Any person whose name has been removed from the register or whose practicing certificate has been suspended shall forthwith surrender to the Council his or her certificate of registration or practicing certificate.

7. Any person being a registered marketing professional who refuses or fails to surrender his or her certificate of registration or practicing certificate to the Council shall be guilty of professional misconduct and shall be liable to a fine not exceeding one hundred thousand shillings.

8. Any person aggrieved by the decision of the Council in the exercise of its powers under this section may within sixty days from the date of the decision of the Council, appeal to the High Court and in any such appeal, the High Court may annul or vary the decision as it deems it necessary.

47. Lifting the Suspension

1. Where a certified marketing professional has been suspended from practicing; he or she may appeal to the Council for the lifting of the suspension at any time before the expiry thereof.

2. Where the Council is satisfied in respect of any certified marketing professional that he or she should have his or her suspension lifted, the Council shall, upon the receipt of the prescribed fee, lift the suspension and restore to the certified marketing professional; his or her registration and practicing certificate.

48. Advertising Dispute Resolution Committee

1. There shall be a Committee to be known as the Advertising Dispute Resolution Committee.
2. The Advertising Dispute Resolution Committee shall have powers to preside over and determine disputes appertaining to, and in respect of all advertising matters.
3. The Advertising Dispute Resolution Committee shall consist of five members appointed by the Council, from among the members of the Council.
4. Members of the Committee shall appoint one of their numbers to be the Chairperson.

49. Reference of Matters to the Advertising Dispute Resolution Committee

1. Matters may be referred to the Committee by any member of the public, the Council or any member of the Society aggrieved by the advertising action or omission of any member of the Society.
2. Where the Council has reason to believe that a registered person may have committed an advertising misconduct it shall refer the matter to the Advertising Dispute Resolution Committee which shall inquire into the matter.

50. Inquiry by the Dispute Resolution Committee

1. Upon inquiry held by the Advertising Dispute Resolution Committee, the person whose conduct is being inquired into shall be afforded an opportunity to be heard in person.
 2. For the purpose of proceedings at any inquiry held by the Advertising Dispute Resolution Committee, the Committee may administer oaths, and may subject to any regulations made under this Act, enforce attendance of persons as witnesses and the production of books and documents.
- (3) The Dispute Resolution Committee shall, have power to regulate its own procedure.

51. Powers of the Disciplinary Committee

1. In exercising its powers under this Act, the Advertising Dispute Resolution Committee may-

- (a) issue the certified marketing professional with a letter of admonishment;
 - (b) direct the cancellation or withdrawal of the impugned advert;
 - (c) recommend the suspension of the registration of the certified marketing professional for a specified period not exceeding twelve months;
 - (d) recommend the withdrawal or cancellation of a practicing certificate of the certified marketing professional for such period not exceeding five years as may be appropriate;
 - (e) impose a fine which it deems appropriate in the circumstances; or
3. Where a decision has been made, the Committee shall as soon as practically possible inform the certified marketing professional of the action taken against them.

IX. FINANCIAL PROVISIONS

52. Funds of the Council

1. The funds of the Council shall consist of—

- (a) such monies or assets as may accrue to or vest in the Council in the course of the exercise of its powers or performance of its functions under this Act;
- (b) such, monies as may be payable to the Council pursuant to this Act or any other written law;
- (c) donations, gifts and endowments from lawful organizations or sources;
- (d) proceeds of any investments by the Council; and
- (e) grants

53. Financial Year

The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

54. Annual Estimates

1. At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Society for that financial year.

2. The annual estimates shall make provisions for all estimated expenditure of the Society for the financial year concerned, and in particular shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the

staff of the Society;

(b) payment of pensions, gratuities and other charges in respect of former staff of the Society;

(c) proper maintenance of the buildings and grounds of the Society;

(d) maintenance, repair and replacement of the equipment and other property of the Society;

(e) payment of allowances of the members of the Society and the members of the Council; and

(f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Council may deem fit.

4. The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the General Meeting for approval.

5. No expenditure shall be incurred for the purposes of the Society or the Council except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the General Meeting given at the annual or special general meeting.

55. Accounts and Audit

1. The Council shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Society.

2. Within a period of three months after the end of each financial year, the Secretary shall submit to the Council the accounts of the Society, in respect of that year, together with —

- (a) a statement of income and expenditure during that financial year; and
- (b) a statement of the assets and liabilities of the Society on the last day of that financial year.

3. The accounts of the Society shall be examined, audited and reported upon annually in accordance with the provisions of this Act.

PART X – MISCELLANEOUS PROVISIONS

56. Regulations.

The Council may, subject to the provisions of this Act and with the approval by a resolution of members, make regulations, which shall be binding on all members of the Society, prescribing any of the following matters-

- (a) annual subscriptions;
- (b) manner of application for membership of the Society;
- (c) grounds for, and procedure relating to, suspension or expulsion of members of the Society;
- (d) resignation of members from the Society;
- (e) regulation of powers exercisable by the Council and any committees or subcommittees of the Council, and delegation of powers;
- (f) manner of convening meetings of the Council and the committees of the Council, and quorums and procedure of meetings of the Council;
- (g) manner of convening general meetings of the Society, and quorum and procedure of general meetings;
- (h) manner of election, removal and replacement of the president, the vice-president and the other members of the Council, and of representatives of the Society on the Disciplinary Committee;
- (i) the functions and powers of the Chapters and sources of funding of the activities of the branches;
- (j) the membership, governance of the chapters and the regulation of the conduct of business by chapters;
- (k) recognition and competencies of chapters of the members of the Society or other local formations within chapters;
- (l) manner of election of the chapter representatives in the Council;
- (m) the manner of election, removal and replacement of a person nominated by the Society or Council to any committee or any statutory body;
- (n) recognition, regulation and membership status of non-practicing members;
- (o) recognition and regulation of warriors and fellows;
- (p) custody and use of the common seal;
- (q) alternative forms of dispute resolution, including reconciliation, mediation and arbitration;
- (r) professional conduct and etiquette by the members; and the regulation of marketing and advertising by members of their services;
- (s) reciprocal recognition of qualification with the other professional associations; and
- (t) any other matters as may be necessary for the promotion of the objects and the regulation of the affairs of the Society.

57. Offences by Persons not Eligible to be Registered

(1) A person who, not being eligible to be registered under this Act, uses any title appropriate to a person so registered, or holds himself out directly or indirectly as being so registered, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

(2) A person who, not being eligible to be registered under this Act, practices for gain as a marketing professional, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

58. Offences by Persons Eligible to be Registered

1. A person who, though eligible to be registered or licensed under this Act, is not so registered or licensed but practices as such, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

59. Transitional Provisions

1. The Board of the Marketing Society of Kenya existing before the enactment of this Act shall assume the responsibilities imposed on the Council and Membership Committee by this Act as an Interim Council and Interim Membership Committee until the first elections held under this Act.

2. The chairperson elected at the last annual general meeting of the former Society shall continue to act as chairperson of the Society until the first elections held under this Act.

3. The Interim Council shall facilitate the registration of members of the Society and the convening of the first annual general meeting at which Council members shall be elected.

4. The first annual general meeting of the Society shall be convened by the Interim Council within a period of twelve months of the commencement of this Act.

6. Any marketing professional carrying out any business contrary to this Act shall ensure that the business is compliant with the Act within twelve months of the commencement of this Act.

(6) Any examinations currently being conducted by any statutory body for the purpose of qualifying as a certified marketing professional shall be transferred to the Examinations Board within twelve months of the commencement of this Act.

(7) "former Society" means the Marketing Society of Kenya existing before the enactment of this Act.