

# BY-LAWS

## PART A – GENERAL PROVISIONS

### 1. Definitions

In these by-laws, unless inconsistent with the context:

- 1.1 “Associate” means a person defined as such in the Constitution.
- 1.2 “Board” means the Board of the Institute;
- 1.3 “Chairman” means the chairperson of the Institute and shall include the person who holds the office of chairperson of the Institute from time to time by whatever title he or she may be known
- 1.4 “Constituency” means the members resident in a region or forming part of an interest group, as the case may be;
- 1.5 “Constitution” means the constitution of The South African Institute of Chartered Accountants, as amended from time to time;
- 1.6 “District Association” means an association of members resident in a sub-region of a Region as determined by the applicable regional council from time to time;
- 1.7 “Entrenched rights” means the right of the members residing within a province to appoint at least one member resident in that province to the regional council which encompasses that province;
- 1.8 “Executive President” means the Executive President of the Institute and shall include the person who occupies the position of Executive President from time to time, by whatever title he or she may be known;
- 1.9 “Institute” means The South African Institute of Chartered Accountants;
- 1.10 “Interest group” means an interest group identified and recognised as such by the Board from time to time, the interest groups identified and recognised by the Board at the date of adoption of these By-laws are more fully defined in Appendix 1 of these By-laws;
- 1.11 “Management Committee” means the committee appointed by the Board which assists the Executive President in the day-to-day running of the Institute.
- 1.12 “Meetings” means meetings of members, associates and/or students of the Institute, as the context requires;

- 1.13 “Members” shall, unless the contrary intention appears, mean Chartered Accountant members of the Institute in one or more of the following categories:
- 1.13.1 “Honorary life member” means a member who has been elected as such by the Board of the Institute;
  - 1.13.2 “Long service member” means a member who has been elected as such by the Board of the Institute;
  - 1.13.3 “Member in public practice” means a member resident in South Africa who holds himself or herself out to the public as being in public practice to provide professional services for reward;
  - 1.13.4 “Member not in public practice” means any member who is not a member in public practice as defined;
  - 1.13.5 “Overseas member” means a member who is ordinarily resident outside the Republic for a full year;
  - 1.13.6 “Reciprocal member” means a member in good standing of a body of accountants recognised by the Board for such purposes and who has been admitted in terms of By-law 29.2.
- 1.14 “Month” means a month commencing on the first day of the month;
- 1.15 “IRBA” means the Independent Regulatory Board for Auditors established in terms of Section 3 of the Auditing Profession Act, 26, 2005 and continuing in existence in terms of Section 3 of the Auditing Profession Act, 26, 2005;
- 1.16 “Provincial Association” means a sub-region of a Region that is substantially aligned with the boundaries of a province and it may include District Associations;
- 1.17 “Province” means a province of the Republic as defined in Section 103(1) of the Constitution of the Republic of South Africa, 1996;
- 1.18 “Region” means a region as determined by the Board from time to time; the regions determined as such by the Board at the date of adoption of these By-laws are more fully defined in Appendix 1 of these By-laws;
- 1.19 “Registered with the IRBA” means any person whose name is entered in the registers established and maintained by the IRBA;

- 1.20 “Registered address” in respect of any member or associate means the address of such member or associate last recorded or deemed to have been recorded in terms of By-law 17;
- 1.21 “Republic” means the Republic of South Africa;
- 1.22 “Secretariat” means the officers and employees appointed by the Board;
- 1.23 “Student” means a person defined as such in the Constitution;
- 1.24 “Vice Chairman” means the Vice Chairperson of the Institute and shall include the person who holds the office of vice chairman from time to time, by whatever title he or she may be known;
- 1.25 “Year” means a year commencing on 1 January.

## **2. Documents issued under the authority of the Institute**

In every document issued under the authority of the Institute, unless inconsistent with the context, words and expressions in the masculine gender include the feminine and words signifying the singular number include the plural and vice versa.

## **3. Board**

- 3.1 The affairs of the Institute shall be managed by a board consisting of members appointed in terms of paragraph 6 of the Constitution.
- 3.2 Each constituency shall appoint one alternate member to act as alternate to each member of the Board appointed by that constituency. An alternate member in the absence or inability to act of the member to whom he or she has been appointed as alternate, shall exercise and discharge all the powers, duties and functions of such member.
- 3.3 The term of office of a Board member shall be 3 (three) years but no member may serve more than 3 (three) terms.
- 3.4 A casual vacancy occurring in the membership of the Board shall be filled by a person appointed by the constituency concerned.
- 3.5 A member of the Board shall at all times act in the interests of the Institute as a whole and not only as a delegate of the constituency which appointed him or her.
- 3.6 A member shall not be eligible for appointment to the Board if:
  - 3.6.1 he or she is declared insane or incapable of managing his or her affairs;
  - 3.6.2 he or she is an unrehabilitated insolvent, or if he or she surrenders his or her estate for the benefit of his or her

- creditors or makes an offer of compromise to his or her creditors;
- 3.6.3 he or she is convicted in the Republic or elsewhere of any criminal offence which, in the opinion of the Board, is of a disgraceful or dishonourable nature, and a period of 10 years since such conviction has not elapsed;
- 3.6.4 he or she is found by the IRBA or by a disciplinary committee of the Institute to have conducted himself or herself in an unprofessional manner, and sentenced to a fine exceeding an amount to be determined by the Board from time to time and published for the information of the members, or is suspended from membership of the Institute, and a period of 10 years since such finding by the IRBA or Disciplinary Committee of the Institute, as the case may be, has not elapsed;
- 3.6.5 he or she ceases to be resident in the Republic.
- 3.7 Notwithstanding the provisions of paragraph 3.3 hereof, the appointment of a member or alternate member of the Board shall terminate ipso facto and he or she shall vacate his or her office on the happening of any of the following events:
  - 3.7.1 he or she ceases to be a member of the Institute;
  - 3.7.2 he or she resigns his or her office by notice in writing to the Board;
  - 3.7.3 he or she is absent for more than two consecutive meetings of the Board without its leave;
  - 3.7.4 he or she is declared insane or incapable of managing his or her affairs;
  - 3.7.5 he or she is sequestered, provisionally or finally, or surrenders his or her estate for the benefit of his or her creditors or makes an offer of compromise to his or her creditors;
  - 3.7.6 he or she is convicted in the Republic or elsewhere of any criminal offence which, in the opinion of the Board, is of a disgraceful or dishonourable nature;
  - 3.7.7 he or she is found by the IRBA or by a disciplinary committee of the Institute to have conducted himself or herself in an unprofessional manner, and sentenced to a fine exceeding an amount to be determined by the Board from time to time and published for the information of the members, or is suspended from membership of the Institute;

- 3.7.8 he or she ceases to be resident in the Republic; or
- 3.7.9 the constituency which appointed him or her to the Board gives 30 days' notice in writing terminating that appointment.
- 3.8 The appointment or removal of a member or alternate member to the Board shall take effect only on receipt by the Institute of:
  - 3.8.1 a letter signed on behalf of the constituency concerned giving the name of the member or alternate member appointed or removed and the date from which his or her appointment or removal is to take effect; and
  - 3.8.2 in the case of appointment, a consent to act as a member or alternate member of the Board signed by the person concerned.
- 3.9 A constituency shall be advised of all appointments made to the Board.
- 3.10 The failure of a constituency to make an appointment to the Board or to fill a vacancy occurring amongst the members appointed by it shall not invalidate the proceedings of the Board.
- 3.11 The Board shall appoint two members of the management committee to act as alternates for the Executive President and Vice President. The provisions of paragraph 3.2 above shall apply *mutatis mutandis*.
- 3.12 The Board shall, in seeking to change a region or constituency, consult with the regional council or constituency representative structure and obtain agreement from that council or structure before making a change.

#### **4. Meetings of the Board**

- 4.1 The term of office of the Board shall be from the end of the Board meeting held during May in one year until the end of the Board meeting held during May in the following year.
- 4.2 The Board shall meet at least four times during its term of office at such times and places as it may determine, provided that at least one of those meetings shall take place in May of the year following the year in which the Board took office.
- 4.3 The quorum for meetings of the Board shall be that number of members comprising a majority of the Board as then constituted.
- 4.4 Questions arising at a meeting of the Board shall be decided by a majority of votes of members or alternates personally present; and

the Chairman shall not have a casting vote in addition to his or her deliberative vote.

- 4.5 A resolution in writing signed by all the members of the Board or, in the absence or inability of a member to act, by his or her alternate shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and constituted, provided that for purposes of approving technical statements, a written resolution assented to by a majority of the members of the Board shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and constituted.
- 4.6 The Board shall cause proper minutes to be kept in separate bound minute books of:
  - 4.6.1 all meetings of the Board;
  - 4.6.2 all general meetings of members of the Institute; and
  - 4.6.3 all meetings of Board committees.

## **5. Regional Councils**

The primary role of the Regional Council is to facilitate the active participation of members in regional, functional and technical committees, and to work in conjunction with the regional office to implement national strategy through facilitating appropriate activities at a regional and district level, including networking, knowledge sharing and social and community based activities. The Regional Council shall consist of members of the Institute who are resident in that Region, appointed in accordance with the terms of reference established by that Regional Council and approved by the Board, with due recognition of the entrenched rights of the members within that Region whose province is embraced by that Regional Council.

## **6. Powers of the Regional Council**

The Regional Council shall represent the interests of the members of the Institute who are resident within the region and without prejudice to the extent of such general powers, shall:

- 6.1 appoint representatives to the Board in accordance with the provisions of paragraph 6.1 of the Constitution;
- 6.2 assist the Institute in communication between members in the Region and the Board;
- 6.3 advise the Institute on the development of Institute strategy;

- 6.4 monitor the implementation of Institute strategy in the Region;
- 6.5 ensure as far as possible that adequate services are being offered to members in the Region;
- 6.6 work with the Institute in the Region;
- 6.7 have the power to raise user-based fees on its members and/or associates for the purposes of enabling the Region to achieve its objectives;
- 6.8 prepare and submit plans and budgets for regional expenses for approval by the Board and to report on financial statements to the Institute;
- 6.9 establish provincial associations and district associations, where appropriate groupings of members exist, and to discharge the responsibilities of district associations where district associations do not exist;
- 6.10 be aware of the contributions that members make to the Institute and where appropriate, to nominate such persons for honorary life membership.

## **7. Regional secretariat**

The Executive President, in consultation with the Regional Council, may appoint such officers and employees of the regional secretariat on such terms and conditions as it shall deem fit, and may remove them or any of them and appoint another or others in their place.

## **8. Other Committees**

- 8.1 The Board may appoint committees or task groups other than those referred to in the Constitution to assist in the performance of its functions and duties in accordance with paragraph 10 of the Constitution. The following provisions apply to all committees and task groups of the Institute.
  - 8.1.1 One of the members of a committee or task group may be designated by the Board as chairman of the committee. Should the Board not so designate a member as chairman or should the member so designated not be present or be unable to act at any particular meeting, the committee or task group shall elect a chairman.

- 8.1.2 The Board may determine a quorum for meetings of a committee or task group, and if not so determined, the quorum shall be fixed by the committee or task group.
- 8.1.3 Any committee or task group so formed shall comply with any instructions given by the Board and shall keep minutes of its meetings if so directed.
- 8.1.4 The Board may assign to a committee or task group so established such of its powers which it may deem fit, but it shall not be divested of any power which it may have assigned to a committee and (save in this case the Professional Conduct Committee and the Disciplinary Committee) it may amend or revoke any decision of such committee or task group.
- 8.1.5 Any committee or task group to whom the foregoing powers have been assigned shall continue to act and retain the powers so assigned until its appointment is revoked by the Board.
- 8.1.6 The Board shall require each committee to draft terms of reference and submit them to the Board for approval from time to time.
- 8.2 The Board shall form a nominations committee to advise it on the composition of Board committees and the boards of any other entities controlled by the Institute.
- 8.3 The Board shall form an audit committee which shall include at least two members who are not members of the Board or employed by the Institute.

## **9. Executive Committee**

- 9.1 The Executive Committee shall consist of the chairman, the Vice Chairman and the Executive President.
- 9.2 The Board shall determine the powers and procedures of the Executive Committee. The Executive Committee shall have only such powers as may from time to time be delegated to it by the Board on such terms and conditions as the Board may prescribe. The Board may at any time revoke any powers so delegated.

## **10. Chairman of meetings**

The Chairman of the Institute, or in his or her absence, the Vice Chairman, shall preside at all meetings of the Board and the Executive Committee. In the absence of the chairman and the Vice Chairman, the members present at the meeting shall elect from their own number a chairman for that meeting.

## **11. Head office**

The head office of the Institute shall be situated at such place as the Board may from time to time determine.

## **12. Secretariat**

The Board may appoint such officers and employees of the Institute on such terms and conditions as it shall deem fit and may remove them or any of them and appoint another or others in their place. This authority may be delegated to the Executive President.

## **13. Annual financial statements and audit**

13.1 The Board shall cause:

13.1.1. records to be properly kept of all transactions undertaken in the name of the Institute;

13.1.2 annual financial statements and an annual report to be prepared. Such financial statements shall be audited by a member or firm appointed by the members at the annual general meeting. The remuneration of the auditor shall be approved by the Board on recommendation by the Audit Committee after it has consulted with the Executive President and shall be disclosed in the annual financial statements.

13.2 The Institute's financial year will end on 31 December each year.

## **14. Registers of members, associates and students**

14.1 The Board shall maintain registers in which shall be recorded the name of each person admitted to membership or associateship of the Institute, or who is registered as a student. In the event of any

person ceasing to be a member, associate or student for any reason whatsoever, his or her name shall be deleted from the register.

- 14.2 The Institute may issue in any year a list of the members, associates and students of the Institute and of their addresses, or any other particulars in respect of the members, associates and students and of the Institute.

## **15. Certificates of membership and associateship, and student cards**

- 15.1 All certificates of membership and associateship of the Institute shall be made in the form from time to time prescribed by the Board and shall be and remain the property of the Institute. Every member and associate shall be entitled to receive from the Institute a certificate of membership or associateship, as the case may be, but in the event of suspension, or removal, or cessation of membership or associateship for any reason, such certificate shall be delivered up to the Board.
- 15.2 Student cards shall be made in the form from time to time prescribed by the Board and shall be and remain the property of the Institute. At the discretion of the Board, every student shall be entitled to receive from the Institute a student card but, in the event of removal or cessation of registration for any reason, such card shall be delivered up to the Board.

## **16. Death of member, associate or student**

Upon the Board being satisfied of the death of any member, associate or student, his or her name shall be removed from the register.

## **17. Registered address and notices**

Every member, associate and student shall give the secretariat written notice naming an address as his or her registered address and shall notify it of any change thereof. The addresses in the records of the Institute of persons who are members, associates and students at the commencement of these By-laws shall be deemed to be the registered addresses of such members, associates or students. Any notice required by these By-laws to be given to a member, associate or student, may be given by sending it to such member, associate or student, at his or her registered address and

such notice shall be deemed to have been served at the time when it was sent.

## **18. Disciplinary Panel and Professional Conduct and Disciplinary Committees**

- 18.1 There shall be appointed by the Board in respect of each year:
  - 18.1.1 a disciplinary panel which shall consist of members of the Institute, from which panel members will be drawn to hear disciplinary matters in terms of these By-laws.
  - 18.1.2 the following committees which shall carry out the duties and exercise the functions and powers granted to them under these By-laws:
    - 18.1.2.1 one or more professional conduct committees, which shall consist of not less than three members, of whom the chairman shall be either an advocate or an attorney of not less than five years' experience, or a retired magistrate, appointed by the Board, the other members of the committee being selected from the Disciplinary Panel by the Board or any committee or person to whom that function is delegated by the Board. The quorum for a meeting of the Professional Conduct Committee shall be two, of whom one shall be the chairman. The Professional Conduct Committee shall have the right at any time to co-opt additional members, whether members of the Institute or otherwise, and who need therefore not be members of the Disciplinary Panel, to the Professional Conduct Committee whenever it deems such additional appointments necessary.
    - 18.1.2.2 one or more disciplinary committees, which shall consist of not less than three members, of whom the chairman shall be either an advocate or an attorney of not less than 10 years' experience, or a retired magistrate, appointed by the Board, the other members of the committee being selected from the Disciplinary Panel by the Board or any committee or person to whom that

function is delegated by the Board. The quorum for a meeting of the Disciplinary Committee shall be two, of whom one shall be the chairman. The Disciplinary Committee shall have the right at any time to co-opt additional members, whether members of the Institute or otherwise, and who need therefore not be members of the Disciplinary Panel, to the Disciplinary Committee whenever it deems such additional appointments necessary.

- 18.2 The Disciplinary Panel and the committees appointed in terms of this By-law shall remain in office and shall function until the appointment of their successors: Provided that if at that date either of the said committees has still before it a partly heard matter, those members who comprise such committees shall continue to act as such for the purpose of completing such matter only. When a matter has been referred to the IRBA in terms of By-law 19.2 it shall for the purposes of this By-law 18 not be deemed to be a partly heard matter and thereafter it shall be dealt with as a new matter. Any vacancies occurring at any time in the Disciplinary Panel may be filled by the Board.

#### **19. Powers and duties of Professional Conduct Committee**

- 19.1 A professional conduct committee shall consider any complaint which is brought to its attention by the Executive President and which *prima facie* appears to indicate that a member, former member, associate, former associate, trainee accountant or former trainee accountant (hereinafter for the purposes of By-laws 19, 20 and 21, referred to as the 'accused') may have committed an offence under these By-laws. All complaints addressed to any other officer of the Institute shall be referred by him or her forthwith to the Executive President.
- 19.2 In cases where the accused concerned is or was registered with the IRBA at the time of the alleged misconduct the Executive President shall forthwith refer the matter to the IRBA. In all other cases the Professional Conduct Committee shall consider matters referred to it in terms of By-law 19.1.

- 19.3 The following provisions shall apply if the alleged misconduct does not require to be referred to the IRBA as in By-law 19.2 or if for any reason the IRBA advises that it is not competent or declines to institute disciplinary proceedings:
- 19.3.1 In any case where the Executive President has *prima facie* evidence that there has been a contravention of these By-laws, he or she may, in his or her discretion, before bringing the matter to the attention of the Professional Conduct Committee, advise the accused in writing of the nature of the complaint and call upon him or her to furnish his or her written explanation in answer to the complaint within 21 days after the date of such notice, and at the same time warn him or her that such explanation may be used in evidence against him or her.
  - 19.3.2 The Professional Conduct Committee may, of its own motion, exercise its powers under these By-laws notwithstanding the absence of a complaint, in which event the provisions of By-law 19.3.7 shall apply.
  - 19.3.3 Save where the Professional Conduct Committee otherwise decides, a complaint shall be in the form of an affidavit, detailing in precise terms the specific acts or failure complained of, and shall be lodged with the Executive President.
  - 19.3.4 The Professional Conduct Committee may require a complainant to provide on affidavit further particulars on any aspect of the complaint.
  - 19.3.5 The Professional Conduct Committee shall not be obliged to disclose the source of a complaint.
  - 19.3.6 Upon receipt of a complaint the Professional Conduct Committee may, where it is of the opinion that the complaint does not disclose a *prima facie* case of improper conduct, or where a complainant has neglected or refused to comply with the requirements of these By-laws, dismiss the complaint and inform the complainant accordingly.

- 19.3.7 Upon receipt of a complaint the Professional Conduct Committee may, where it is of the opinion that a *prima facie* case has been made for improper conduct on the part of the accused:
- 19.3.7.1 except where this has already been done by the Executive President, advise the accused in writing of the particulars of the complaint and call upon him or her to furnish his or her written explanation in answer to the complaint within 21 days of such notice, and at the same time warn him or her that such explanation may be used in evidence against him or her;
  - 19.3.7.2 at any time, and whether or not it has proceeded or also thereafter proceeds under paragraph 19.3.7.1 above, call upon the accused to appear at such time and place as it may determine, to explain, or elucidate, or discuss the matter without prejudice to his or her rights; only the Professional Conduct Committee and not the accused will be entitled to call for such a meeting and the accused will not be entitled to be represented at the meeting.
- 19.3.8 When, upon consideration of the complaint and the accused's explanation in answer thereto, or elucidation of the matter, either written or oral, the Professional Conduct Committee is satisfied that:
- 19.3.8.1 the accused has given a reasonable explanation with regard to the conduct imputed to him or her; or
  - 19.3.8.2 the conduct imputed to the accused does not constitute improper conduct; or
  - 19.3.8.3 there is no reasonable prospect of proving that the accused has been guilty of the conduct imputed to him or her,
- it may decide not to proceed further in the matter and shall advise the complainant and the accused accordingly.

19.3.9.1 If on receipt of the accused's explanation the Professional Conduct Committee is not satisfied therewith or if no explanation is forthcoming, the Professional Conduct Committee shall have full power to caution or reprimand the accused, or to impose a fine on the accused of not more than half the maximum amount that the Disciplinary Committee may impose in terms of the provisions of By-law 20.8.3, or to prefer a formal complaint against the accused to the Disciplinary Committee; provided that where the Professional Conduct Committee imposes a fine in terms of this By-law, it may suspend the payment of the fine or any part thereof on such conditions as it may determine.

19.3.9.2 If the Professional Conduct Committee has cautioned, reprimanded or fined such accused, the accused shall have the right to demand, within a period of 21 days after being notified in writing of the imposition of such caution, reprimand or fine, that the matter be referred to the Disciplinary Committee, which shall deal with the matter anew as a formal complaint and shall, if it finds the accused guilty of the conduct complained of, be entitled to impose a sentence more severe than that imposed by the Professional Conduct Committee.

19.3.9.3 If the Professional Conduct Committee considers the offence to be so serious that it might warrant the imposition of a fine greater than half the maximum amount that the Disciplinary Committee may impose (as determined by the Board from time to time), or suspension or exclusion from membership or associateship, the matter shall be referred to the Disciplinary Committee to be dealt with in terms of By-law 20.

19.4 The following provisions shall apply in all cases where the accused concerned is, or was, registered with the IRBA at the time of the alleged misconduct:

19.4.1 The Professional Conduct Committee may not pursue any matter referred to the IRBA in terms of By-law 19.2 or

any other matter affecting an accused which may be dealt with by the IRBA unless the IRBA or any committee thereof has for any reason stated that it is not competent or declines to institute proceedings.

19.4.2 Where the conduct of an accused has been investigated or dealt with by the IRBA, whether as a result of a reference in terms of By-law 19.2 or otherwise, and the IRBA or any committee of the IRBA:

19.4.2.1 has found the accused not guilty of any alleged misconduct, the Professional Conduct Committee shall be obliged to accept that finding for all purposes of these By-laws and to dispose of the matter without taking any further steps against the accused in relation to the conduct complained of;

19.4.2.2 has found the accused guilty of one or more of the charges of misconduct and has sentenced him or her in respect thereof to a caution or a reprimand or to a fine in an amount not exceeding the amount which the Professional Conduct Committee is entitled to impose under By-law 19.3.9.1, whether or not payment of part or the whole thereof has been suspended:

19.4.2.2 (a) the Professional Conduct Committee shall be obliged to accept that finding and sentence for all purposes of these By-laws and to take no further steps against the accused in relation to the conduct complained of;

19.4.2.2 (b) the accused will be deemed to have been found guilty by the Professional Conduct Committee of an offence as contemplated in By-law 34.1 and a note to that effect, which shall also refer to the punishment imposed by the IRBA, shall be entered on the record

- of the accused as to the finding of the IRBA and the sentence imposed in respect thereof;
- 19.4.2.2. (c) the note of the finding of the IRBA and the sentence imposed in respect thereof shall for all purposes of these By-laws be regarded as a record of a previous conviction by the Professional Conduct Committee of an offence under these By-laws and of the sentence imposed in respect thereof.
- 19.4.2.3 has found the accused guilty of one or more of the charges of misconduct and has sentenced him or her in respect thereof to a fine in excess of the amount which the Professional Conduct Committee is permitted to impose in terms of By-law 19.3.9.1, or to suspension from practice, or to the removal of his or her name from the register of accountants and auditors, or to qualified, temporary or permanent disqualification from registration as an accountant and auditor, whether or not payment of part or the whole thereof has been suspended, the Professional Conduct Committee shall refer the matter to the Disciplinary Committee to be dealt with in terms of By-law 20.
- 19.4.3 Notwithstanding anything to the contrary contained in these By-laws:
- 19.4.3.1 if the IRBA or any committee of the IRBA has investigated or dealt with the alleged misconduct of an accused and has found him or her not guilty thereof on the grounds that the IRBA or any committee did not have capacity or jurisdiction or was not competent to investigate that conduct, then the Professional Conduct Committee shall nevertheless have the right itself to investigate the allegations in terms

of these By-laws and to take whatever steps it deems appropriate in accordance with these By-laws;

19.4.3.2 a conviction or finding by the IRBA or any committee of the IRBA shall for purposes of these By-laws be accepted as conclusive evidence of contravention or finding, and it shall not be necessary for any such purposes to adduce any evidence other than evidence of the conviction or finding.

19.5 The Executive President may request a member, associate or employee of the Institute to present the formal complaint of the Professional Conduct Committee, or may instruct an attorney to present, or to brief counsel to present, such complaint.

## **20. Powers and duties of Disciplinary Committee**

20.1 The Disciplinary Committee, on receipt of a formal complaint in pursuance of By-law 19 or otherwise shall give the accused notice of its intention to consider the complaint, specifying the time and place of the enquiry. The Disciplinary Committee shall give such accused an opportunity of being heard before it and shall, if the accused so desires, permit such accused to be represented before it by counsel or by an attorney or by a member of the Institute.

20.2 Notwithstanding the provisions of By-law 20.1, where the conduct of the accused has been investigated or dealt with by the IRBA or any committee of the IRBA, whether as a result of a reference in terms of By-law 19.2 or otherwise, and the IRBA or any committee of the IRBA has found the accused guilty of one or more of the charges of misconduct and has imposed a sentence on him or her in respect thereof, and the matter has been referred to the Disciplinary Committee in terms of By-law 19.4.2.3:

20.2.1 the Disciplinary Committee shall be obliged to accept that finding and sentence for all purposes of these By-laws and to take no further steps against the accused in relation to the conduct complained of;

- 20.2.2 the accused will be deemed to have been found guilty by the Disciplinary Committee of an offence as contemplated in By-law 34.1 and a note to that effect, which shall also refer to the punishment imposed by the IRBA, shall be entered on the record of the accused as to the finding of the IRBA and the sentence imposed in respect thereof;
- 20.2.3 the note of the finding of the IRBA and the sentence imposed in respect thereof shall for all purposes of these By-laws be regarded as a record of a previous conviction by the Disciplinary Committee of an offence under these By-laws and of the sentence imposed in respect thereof; provided that notwithstanding anything contained in these By-laws, where the sentence imposed on the accused by the IRBA is suspension from practice, or the removal of his or her name from the register of accountants and auditors, or qualified, temporary or permanent disqualification from registration as an accountant and auditor, whether or not part or the whole thereof has been suspended, the Disciplinary Committee shall be obliged to accept the finding of the IRBA or any committee of the IRBA, but shall impose its own punishment on the accused and for this purpose shall afford the accused an opportunity of making representations on the issue orally or in writing to the Disciplinary Committee;
- 20.2.4 notwithstanding anything to the contrary contained in these By-laws the right of the accused to be heard in terms of the provisions of this paragraph shall be limited solely to the question of the penalty to be imposed on him or her, including whether or not there should be publication of his or her name.
- 20.3 Should the accused against whom any complaint is preferred neglect or fail to attend before the Disciplinary Committee at the time and place indicated in the notice issued in terms of By-law 20.1, the Disciplinary Committee shall be entitled to proceed with its consideration of the complaint in his or her absence.

- 20.4 All evidence given at the hearing of a complaint by the Disciplinary Committee shall be *viva voce* unless the Disciplinary Committee resolves that the documents received in connection with the matter shall be admitted as evidence in the proceedings. If such documents are admitted in evidence this will nevertheless not prevent any further evidence from being admitted in the proceedings. The Disciplinary Committee shall also be entitled to obtain affidavits from any persons if it considers them necessary for the better investigation of the complaint. It shall be sufficient, for the purpose of proving the proper execution, or the terms or the content, or the authenticity of a document for a copy of the document purporting to be a copy of the original to be used in evidence, subject to the right of any person to adduce evidence that such copy is not authentic.
- 20.5 The Disciplinary Committee shall also have the power to order the production for inspection of any books, documents and papers in the possession of or under the control of the accused against whom the complaint has been made, or from any other member or associate, if it considers such books, documents and papers necessary for the better investigation of the complaint.
- 20.6 Where a hearing is being conducted and any person whose evidence may be material has not been called as a witness, the Disciplinary Committee may call such person as a witness.
- 20.7 The chairman of the Disciplinary Committee shall be permitted to engage the services of an attorney or counsel at any stage of a hearing of the Disciplinary Committee to advise him or her on points of law and procedure.
- 20.8 If the Disciplinary Committee is of the opinion that the accused is guilty of a punishable offence, it shall make a finding to that effect and thereupon it shall have full power to order that the accused concerned be:
- 20.8.1 cautioned;
  - 20.8.2 reprimanded;
  - 20.8.3 fined up to a maximum amount to be determined by the Board from time to time;

20.8.4 suspended from membership, associateship or registration as a trainee accountant for a period not exceeding five years;

20.8.5 excluded from membership or associateship or from registration as a trainee accountant;

20.8.6 disqualified from applying for membership permanently or for such period as the Disciplinary Committee may determine, or subject to such conditions as the committee may determine;

provided that where the Disciplinary Committee imposes a fine in terms of By-law 20.8.3 it may suspend the payment of the fine or any part thereof on such conditions as it may determine; and where the Disciplinary Committee imposes a punishment in terms of By-law 20.8.4 or 20.8.5 it may suspend the coming into effect of the punishment on such conditions as it may determine.

20.9 Any such fine may be recovered from the accused in civil proceedings in any court.

20.10 The Disciplinary Committee shall have the power to order any accused upon whom any punishment is imposed under these By-laws to pay such reasonable costs as the Institute may have incurred in connection with the investigation or hearing by the Disciplinary Committee, or such part of those costs as the Disciplinary Committee may consider just. Such costs may be recovered from the accused in civil proceedings in any court.

20.11 Any finding by the Disciplinary Committee resulting in suspension or exclusion from membership, associateship or registration as a trainee accountant shall *ipso facto* result in suspension or exclusion from membership, associateship or registration of all regions and district associations, as the case may be.

20.12 Notice of the finding and the decision of the Disciplinary Committee shall be given forthwith to the accused concerned.

20.13 Any person who has been excluded from membership, associateship or registration in terms of By-law 20.8.5 shall not be entitled to apply for re-admission as a member, associate or trainee accountant until the expiry of a period of 10 years reckoned from the date of such exclusion; provided, however, that the Board may reduce this period by up to five years in any case.

20.14 Hearings shall be conducted by the Disciplinary Committee at a venue determined by the Executive President and shall be open to the public, unless exceptional circumstances exist which warrant such hearings being held in camera.

## **21. Record and publication of findings and decisions**

21.1 All findings and decisions of the Professional Conduct and Disciplinary Committees shall take effect when made and shall be reported to the Board, which shall cause the same to be duly recorded, provided that where the matter has been referred to the Disciplinary Committee at the request of the accused in terms of By-law 19.3.9.2, that penalty shall not take effect until the Disciplinary Committee has dealt with the matter.

21.2.1 Where the Professional Conduct Committee or the Disciplinary Committee has imposed a penalty on an accused, the relevant committee shall be entitled to direct that there be publication of the name of the accused, and if the committee so directs, also the name of his or her firm, a brief description of the offence and the penalty imposed, in such manner and to such persons as the committee shall decide: Provided that the committee shall not be entitled to direct that publication be made without first advising the accused thereof and giving him or her an opportunity of being heard on the question before the committee.

21.2.2 Where the Professional Conduct Committee or the Disciplinary Committee has found an accused not guilty of the complaint, no publication of that fact may take place unless the accused has requested the relevant committee to direct that publication should take place. If the accused does so request that publication should take place, then the relevant committee shall direct (unless it is of the view that there are exceptional circumstances which would justify its not so directing) that there be publication, in such manner and to such persons as that committee shall decide, of the name of the accused, a brief description of the alleged offence and the finding of the

relevant committee. The committee may also, in its discretion, direct that the name of the firm of the accused be published.

## **22. Power to make rules**

The Board shall have power to make such rules (not inconsistent with the Constitution and By-laws) as it may consider necessary for the performance of the respective functions of the Professional Conduct Committee and the Disciplinary Committee.

## **23. Powers and duties of the Executive President**

The powers and duties of the Executive President arising out of the Constitution and By-laws may be delegated to an appropriate person in the secretariat.

## **24. Rules or Code of Professional Conduct**

The Board shall have the power to prescribe, from time to time, Rules or a Code of Professional Conduct, applicable to members, associates and students.

## **25. Amendment of By-laws**

The Board may, from time to time, amend these By-laws as provided in the Constitution.

## **26. Winding up of the Institute**

Upon a resolution to wind up the Institute having been passed in terms of the Constitution, the Board shall, by simple majority vote, appoint a liquidator or liquidators and may give such directions as to the method of winding up as they think fit: Provided that any funds and/or assets remaining after the payment of the debts and expenses of the Institute and the costs of winding up shall be distributed to or amongst such kindred or related associations, bodies or institutions with objects similar to those of the Institute, including educational institutions (but excluding individual members or firms or companies controlled by members) as the Board

shall decide: Provided further that such associations, bodies or institutions are themselves exempt from liability to pay income tax.

## **27. Interpretation of By-laws**

The headings and sub-headings shall not affect the interpretation of these By-laws.

## **PART B - APPLICABLE ONLY TO CHARTERED ACCOUNTANTS**

### **28. Application for membership**

- 28.1 Application for membership of the Institute shall be made to the Board in a form prescribed by the Board. Each applicant shall:
- 28.1.1 pay the entrance fee, if any, and the subscription for the current year as determined from time to time;
  - 28.1.2 certify in the prescribed form that the information given by him or her therein is true and correct in every detail;
  - 28.1.3 in the event of his or her admission, undertake to observe the provisions of the Constitution and the By-laws and rules framed thereunder from time to time in force; and
  - 28.1.4 satisfy the Board in such manner as it may require that at the date of his or her application, he or she is qualified for admission under By-law 29, that he or she is a fit and proper person to be admitted to membership and is not less than 21 years of age.
- 28.2 The application for membership, if accepted by the Board, shall be subject to confirmation by the regions which the applicant has indicated he or she wishes to join.

### **29. Qualification for admission to membership**

Subject to the provisions of By-law 28, qualification for admission to the Institute shall be proof to the satisfaction of the Board of one of the following:

- 29.1 that the applicant has passed the examinations, and has the practical experience, prescribed by the Board; or

- 29.2 if the application is for admission as a reciprocal member, that the applicant is a member in good standing of a body of accountants recognised by the Board for this purpose and has passed the examinations prescribed by the Board for this purpose, if so required by the Board.

### **30. Cancellation of membership**

- 30.1 The Board shall cancel the membership of any member who subsequent to his or her admission to membership:
- 30.1.1 is removed from an office of trust on account of misconduct; or
  - 30.1.2 is convicted of theft, fraud, forgery or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine, or to a fine of an amount to be determined by the Board from time to time, and published by the Board for the information of the members.
- 30.2 The Disciplinary Committee may in its discretion order the cancellation of the membership of any member whose estate is provisionally or finally sequestrated or who enters into an arrangement with his or her creditors subsequent to his or her admission to membership: Provided, however, that before doing so, the Disciplinary Committee shall afford such member an opportunity, within 21 days after being called upon by the Disciplinary Committee to do so, to satisfy the committee that there were exceptional circumstances relating to the sequestration or arrangement which would justify the committee's not exercising its discretion to order the cancellation of his or her membership.
- 30.3 When the membership of a person is cancelled in terms of By-law 30.1 or 30.2 the Board shall remove his or her name from the register immediately, advising the Regional Councils of the action taken.
- 30.4 A person whose membership has been cancelled in terms of By-law 30.1 or 30.2 may apply for his or her re-admission as a member after the expiry of a period of 10 years reckoned from the date of such cancellation, provided, however, that the Board may, on the recommendation of the Disciplinary Committee, reduce this period in any particular case where it considers that it would be just and equitable to do so.

- 30.5 The Board shall report any cancellation of membership in terms of By-law 30.1 or 30.2 to members and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate: Provided that in the case of the cancellation of membership in terms of By-law 30.2 it shall comply with any recommendation of the Disciplinary Committee.
- 30.6 Any member who has not complied with the Continuing Professional Development policy within a period of four months from the date when reporting their compliance with the policy became due, shall be sent a registered letter reminding him or her that he or she is not in compliance.  
Should the member fail to effect compliance before the expiration of six months from the date when required to do so, he or she shall, *ipso facto*, cease to be a member, provided that:
- 30.6.1 the Board shall have power in its discretion to suspend the operation of this By-law, either generally or in relation to a specific case, and to stipulate the conditions on which it will be suspended.
- 30.7 The regions shall be informed by the Board of any cessation of membership in terms of By-law 30.6.
- 30.8 The Board shall report any cancellation of membership in terms of By-law 30.6 to members and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

### **31. Fees and subscriptions**

- 31.1 Each member of the Institute, other than Honorary or Long Service members, shall pay an annual subscription at such time and of such amount and on such conditions as may from time to time be determined by the Board. The amount of the annual subscription in respect of any category of membership will be the amount applicable to that category on 1 January of the year in question, irrespective of any change in the category of membership during the year. Unless, and until otherwise so determined, the annual subscription shall be due on the first day of January in each year and shall be payable during that month.
- 31.2 Any member admitted after 30 June in any year shall pay only one-half of the annual subscription for the year then current.

- 31.3 The Board may in its discretion increase the rate of subscription payable by an overseas member after taking into consideration the reliance of such member on the services provided to him or her by the Institute: Provided that the increased rate of subscription payable shall in the case of an overseas member in public practice not exceed that of a member in public practice in the Republic and in the case of an overseas member not in public practice shall not exceed that of a member not in public practice in the Republic.
- 31.4 A person who at the time of his or her application for membership qualifies for overseas membership shall be placed on the overseas list, be an overseas member *ab initio* and shall pay a subscription at the rate applicable to overseas members in respect of the year in which he or she is admitted and for so long as he or she is qualified to remain on the overseas list.
- 31.5 On admission to the Institute an entrance fee shall be payable of such amount as may from time to time be determined by the Board.
- 31.6 The Board may in its discretion remit in whole or in part the subscription and/or entrance fee of a member under special circumstances which in its opinion warrant such remission.
- 31.7 The Board may from time to time call upon members, other than Honorary or Long Service members, for payment of a contribution or contributions for the purpose of meeting expenses which it may incur in the interests and/or furtherance of the objects of the Institute: Provided that in respect of each category of member such contribution shall not exceed one-quarter of the subscription payable in any one financial year.
- 31.8 Any member who is in arrear with his or her annual subscription may be required to pay such penalty as may be determined by the Board from time to time. The Board shall from time to time publish the penalties payable under this By-law.
- 31.9 Any member who is in arrear with his or her annual subscription or any contribution or charge for a period of four months from the date when the same became due under these By-laws, shall be sent a registered letter reminding him or her that he or she is in arrear. Should the member fail to effect payment before the expiration of five months from the date when the amount became due under these By-laws, he or she shall, *ipso facto*, cease to be a member: Provided that -

- 31.9.1 he or she shall nevertheless be liable to pay the amount of such year's subscription and any other arrear subscriptions, or other contributions or charges due by him or her to the Institute, and shall be liable otherwise as a member;
- 31.9.2 the Board shall have power in its discretion to suspend the operation of this By-law, either generally or in relation to a specific case, and to stipulate the conditions on which it will be suspended.
- 31.10 The Board may in its discretion reinstate any member whose membership has ceased in terms of By-law 31.9 and may in such case dispense with a new application for membership and/or payment of an entrance fee but may impose a reinstatement fee of an amount to be determined by the Board from time to time.
- 31.11 The regions shall be informed by the Board of any cessation of membership or reinstatement in terms of By-laws 31.9 and 31.10.
- 31.12 The Board shall report any cancellation of membership in terms of By-law 31.9 to members and may report shall cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

## **32. Resignation and re-admission**

- 32.1 Any member who has paid all his or her dues and subscriptions and is otherwise in good standing may resign his or her membership by sending to the Board written notice to that effect and such notice shall become effective immediately on acceptance thereof by the Board: Provided always that:
  - 32.1.1 if any complaint has been received or an enquiry is pending against such member in respect of his or her professional conduct, or in respect of the sequestration of his or her estate, whether provisionally or finally, or his or her having entered into an agreement with his or her creditors, such resignation need not be accepted, but his or her membership may be suspended until such complaint or enquiry has been finally dealt with by the Board;
  - 32.1.2 if no such complaint has been received and no enquiry is pending the resignation shall be accepted by the Board;

- 32.1.3 a member whose membership has been suspended in terms of By-law 32.1 shall not enjoy the benefits of membership;
- 32.1.4 when the resignation is accepted, such acceptance may be qualified or endorsed through the Executive President so as to record the finding of the Board in respect of such complaint or enquiry.
- 32.2 No resignation once tendered by any member may be withdrawn without the consent of the Board first having been obtained. Any person who has resigned his or her membership shall be entitled to re-admission on proof to the Board that he or she complies with the conditions of By-law 28 at the date of his or her application for re-admission.
- 32.3 The Board shall report any resignation of membership in terms of this By-law to members and may report such resignation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

### **33. Life and long service membership**

- 33.1 The Board may, in special circumstances, recognise the meritorious service of a member towards the Institute or the accountancy profession by electing such member as an Honorary Life Member.
- 33.2 The Board may elect a member as a Long Service Member when such member has:
  - 33.2.1 been a Chartered Accountant (SA) for an unbroken period of forty (40) years; or
  - 33.2.2 attained the age of sixty-five years and has been a Chartered Accountant (SA) for an unbroken period of twenty-five (25) years.
  - 33.2.3 life and long service members shall remain as such at the pleasure of the Board and shall not be liable for any subscriptions to the Institute.

### **34. Punishable offences**

The following acts and practices, whether of commission or of omission, upon the part of any person who is or was a member of the Institute at the time of the alleged acts or practices shall be offences and such member or former member found guilty thereof as provided in these By-laws shall be

liable to the penalties prescribed in these By-laws: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

- 34.1 contravening any of the provisions of Sections 20 and/or 27 of the Public Accountants and Auditors Act, 1991, or any amendment or replacement thereof or contravening any rules or regulations created by the IRBA from time to time under the power granted to it in terms of Section 13(1)(h) of the said Act, or any amendment or replacement thereof, or, in the case of a member or former member who is not registered with the IRBA, conducting himself or herself in a manner which would amount to a contravention of the foregoing if he or she were so registered, or obtaining registration under Section 15 of the said Act by fraudulent or irregular means;
- 34.2 conducting himself or herself with gross negligence in connection with any work performed by him or her in his or her profession or employment, including work or employment in connection with secretaryships, trusteeships, liquidations, judicial managements, executorships, administratorships or curatorships, or any office of trust which he or she has undertaken or accepted;
- 34.3 certifying or reporting on any accounts, statements, reports or other documents, without taking reasonable steps to ensure the correctness of such certificate or report;
- 34.4 contravening any of the provisions of the Chartered Accountants' Designation (Private) Act, No. 67 of 1993;
- 34.5 directly or indirectly paying a person, other than a member in public practice or any person practising as an accountant or auditor outside the Republic, a commission or giving such person monetary or other consideration, as remuneration for bringing the member work, or for inducing other persons to give work to the member;
- 34.6 accepting directly or indirectly any commission, brokerage or other remuneration in respect of professional or commercial business referred to others as an incident to his or her service to any client, except with the knowledge and consent of that client;
- 34.7 improperly obtaining or attempting to obtain work;
- 34.8 soliciting or advertising or canvassing in the Republic (or in any territory outside the Republic designated by the Board from time to time) in any manner not permitted by the Rules or Code of Professional Conduct prescribed by the Board from time to time;

- 34.9 wilfully refusing or failing to perform or conform with any of the provisions of these By-laws which it is his or her duty to do;
- 34.10 committing a breach of any Rule or Code of Professional Conduct prescribed by the Board from time to time in terms of By-law 24 or, after having been previously warned by the Board or any committee appointed by it, continuing to commit a breach of such Rules or Code of Professional Conduct;
- 34.11 unlawfully failing to account for, or unreasonably delaying an accounting of any money or property received for or on behalf of a client or any other person when called upon to do so;
- 34.12 conducting himself or herself in a manner which, in the opinion of the Professional Conduct Committee or the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular or unworthy, or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute;
- 34.13 failing to comply with any regulation, By-law, article or Code of Conduct;
- 34.14 seeking either before or during the period of training of a trainee accountant, to impose any restraint whatever on the trainee accountant concerned, which will apply after the date of the termination of the training period, or threatening, or attempting to enforce, any such restraints after such date;
- 34.15 directly or indirectly stipulating or receiving from a trainee accountant who is or has been serving under a training contract, or from any other person any payment, reward, compensation or consideration for agreeing to the cancellation of such training contract: Provided that it shall not be deemed a breach of this By-law if a member, or former member, requires to be or is reimbursed in respect of disbursements actually made by him or her to the Institute in connection with a training contract which is subsequently cancelled and of which disbursements he or she is able to produce proof to the satisfaction of the Institute;
- 34.16 without reasonable cause failing to resign from a professional appointment when requested by the client to do so;
- 34.17 failing to answer or deal with appropriately within a reasonable time any correspondence or other communication from the Institute or any other person which requires a reply or other response;
- 34.18 failing to comply within a reasonable time with an order, requirement or request from the Institute;

34.19 failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute.

Improper conduct on the part of a trainee accountant shall include any conduct which would be improper had it been perpetrated by a member or associate.

## **PART C - APPLICABLE ONLY TO THE COLLEGE OF GENERAL ACCOUNTANTS**

### **35. Application for associateship**

Application for associateship of the Institute shall be made to the Board in a form prescribed by the Board. Each applicant shall:

- 35.1 pay the application fee, if any, and the subscription for the current year as determined from time to time;
- 35.2 certify in the prescribed form that the information given by him or her therein is true and correct in every detail;
- 35.3 in the event of his or her admission, undertake to observe the provisions of the Constitution and the By-laws and rules framed thereunder from time to time in force; and
- 35.4 satisfy the Board in such manner as it may require that at the date of his or her application, he or she is qualified for admission under By-law 36, that he or she is a fit and proper person to be admitted to associateship and is not less than 21 years of age.

### **36. Qualification for admission to associateship**

Subject to the provisions of By-law 35, qualification for admission to associateship of the Institute shall be proof to the satisfaction of the Board that the applicant has passed the examinations, and has the practical experience, prescribed by the Board.

### **37. Cancellation of associateship**

- 37.1 The Board shall cancel the associateship of any associate who subsequent to his or her admission to associateship:
  - 37.1.1 is removed from an office of trust on account of misconduct; or
  - 37.1.2 is convicted of theft, fraud, forgery, or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine, or to a fine of

an amount to be determined by the Board from time to time and published by the Board for the information of the members and associates.

- 37.2 The Disciplinary Committee may in its discretion order the cancellation of the associateship of any associate whose estate is provisionally or finally sequestered, or who enters into an arrangement with his or her creditors subsequent to his or her admission to associateship: Provided, however, that before doing so, the Disciplinary Committee shall afford such associate an opportunity, within 21 days after being called upon by the Disciplinary Committee to do so, to satisfy the committee that there were exceptional circumstances relating to the sequestration or arrangement which would justify the committee's not exercising its discretion to order the cancellation of his or her associateship.
- 37.3 When the associateship of a person is cancelled in terms of By-law 37.1 or 37.2 the Board shall remove his or her name from the register immediately.
- 37.4 A person whose associateship has been cancelled in terms of By-law 37.1 or 37.2 may apply for his or her re-admission as an associate after the expiry of a period of 10 years reckoned from the date of such cancellation, provided however that the Board may on the recommendation of the Disciplinary Committee reduce this period in any particular case where it considers that it would be just and equitable to do so.
- 37.5 The Board shall report any cancellation of associateship in terms of By-law 37.1 or 37.2 to members, associates and students and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate: Provided that in the case of the cancellation of associateship in terms of By-law 37.2 it shall comply with any recommendation of the Disciplinary Committee.
- 37.6 Any associate who has not complied with the Continuing Professional Development policy within a period of four months from the date when reporting their compliance with the policy became due, shall be sent a registered letter reminding him or her that he or she is not in compliance.

Should the associate fail to effect compliance before the expiration of six months from the date when required to do so, he or she shall, *ipso facto*, cease to be an associate, provided that:

37.6.1 the Board shall have power in its discretion to suspend the operation of this By-law, either generally or in relation to a specific case, and to stipulate the conditions on which it will be suspended.

37.7 The regions shall be informed by the Board of any cessation of associateship in terms of By-law 37.6.

37.8 The Board shall report any cancellation of associateship in terms of By-law 37.6 to associates and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

### **38. Fees and subscriptions**

38.1 Each associate of the Institute shall pay an annual subscription at such time and of such amount and on such conditions as may from time to time be determined by the Board. The amount of the annual subscription in respect of any category of associateship will be the amount applicable to that category on 1 January of the year in question, irrespective of any change in the category of associateship during the year. Unless and until otherwise so determined, the annual subscription shall be due on the first day of January in each year and shall be payable during that month.

38.2 Any associate admitted after 30 June in any year shall pay only one-half of the annual subscription for the year then current.

38.3 On admission to the Institute as an associate an entrance fee shall be payable of such amount as may from time to time be determined by the Board.

38.4 The Board may in its discretion remit in whole or in part the subscription and/or application fee of an associate under special circumstances which in its opinion warrant such remission.

38.5 The Board may from time to time call upon associates for payment of a contribution or contributions for the purpose of meeting expenses which it may incur in the interests and/or furtherance of the objects of the Institute: Provided that such contribution shall not exceed one-quarter of the subscription payable in any one financial year.

38.6 Any associate who is in arrear with his or her annual subscription may be required to pay such penalty as may be determined by the Board from time to time. The Board shall from time to time publish the penalties payable under this By-law.

- 38.7 Any associate who is in arrear with his or her annual subscription or any contribution or charge for a period of four months from the date when the same became due under these By-laws shall be sent a registered letter reminding him or her that he or she is in arrear. Should the associate fail to effect payment before the expiration of five months from the date when the amount became due under these By-laws, he or she shall, *ipso facto*, cease to be an associate: Provided that -
- 38.7.1 he or she shall nevertheless be liable to pay the amount of such year's subscription and any other arrear subscriptions or other contributions or charges due by him or her to the Institute and shall be liable otherwise as an associate;
- 38.7.2 the Board shall have power in its discretion to suspend the operation of this By-law, either generally or in relation to a specific case, and to stipulate the conditions on which it will be suspended.
- 38.8 The Board may in its discretion reinstate any associate whose associateship has ceased in terms of By-law 38.7 and may in such case dispense with a new application for associateship and/or payment of an entrance fee, but may impose a reinstatement fee of an amount to be determined by the Board from time to time.
- 38.9 The Board shall report any cancellation of associateship in terms of By-law 38.7 to associates and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

### **39. Resignation and re-admission**

- 39.1 Any associate who has paid all his or her dues and subscriptions and is otherwise in good standing may resign his or her associateship by sending to the Board written notice to that effect and such notice shall become effective immediately on acceptance thereof by the Board: Provided always that:
- 39.1.1 if any complaint has been received or an enquiry is pending against such associate in respect of his or her professional conduct, or in respect of the sequestration of his or her estate, whether provisionally or finally, or his or her having entered into an agreement with his or her creditors, such resignation need not be accepted but his or

- her associateship may be suspended until such complaint or enquiry has been finally dealt with by the Board;
- 39.1.2 if no such complaint has been received and no enquiry is pending the resignation shall be accepted by the Board;
- 39.1.3 an associate whose associateship has been suspended in terms of By-law 39.1 shall not enjoy the benefits of associateship;
- 39.1.4 when the resignation is accepted, such acceptance may be qualified or endorsed through the Executive President so as to record the finding of the Board in respect of such complaint or enquiry.
- 39.2 No resignation once tendered by any associate may be withdrawn without the consent of the Board first having been obtained. Any person who has resigned his or her associateship shall be entitled to re-admission on proof to the Board that he or she complies with the conditions of By-law 36 at the date of his or her application for re-admission.
- 39.3 The Board shall report any resignation of associateship in terms of this By-law to associates and may report such resignation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

#### **40. Life and long service associateship**

- 40.1 The Board may, in special circumstances, recognise the meritorious service of an associate towards the Institute, or the accountancy profession, by electing such member as an Honorary Life Associate.
- 40.2 The Board may elect an associate as a Long Service associate when such associate has:
- 40.2.1 been an associate for an unbroken period of 40 years; or
- 40.2.2 attained the age of sixty-five (65) years, provided that he or she has been an associate for an unbroken period of twenty-five (25) years.
- 40.3 Life and Long Service associates shall remain as such at the pleasure of the Board and shall not be liable for any subscriptions to the Institute.

#### **41. Punishable offences**

The following acts and practices, whether of commission or of omission, upon the part of any person who is or was an associate of the Institute at the time of the alleged acts or practices shall be offences and such associate or former associate found guilty thereof as provided in these By-laws shall be liable to the penalties prescribed in these By-laws: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

- 41.1 conducting himself or herself with gross negligence in connection with any work performed by him or her in his or her profession or employment, including, without limitation, work or employment in connection with secretaryships, trusteeships, liquidations, judicial managements, executorships, administratorships or curatorships, or any office of trust which he or she has undertaken or accepted;
- 41.2 contravening any of the provisions of the Chartered Accountants' Designation (Private) Act, No. 67 of 1993;
- 41.3 directly or indirectly paying a person, other than a member or associate in public practice, or any person practising as an accountant or auditor outside the Republic, a commission, or giving such person monetary or other consideration, as remuneration for bringing the member or associate work, or for inducing other persons to give work to the member or associate;
- 41.4 accepting directly or indirectly any commission, brokerage or other remuneration in respect of professional or commercial business referred to others as an incident to his or her service to any client, except with the knowledge and consent of that client;
- 41.5 improperly obtaining or attempting to obtain work;
- 41.6 soliciting or advertising or canvassing in the Republic (or in any territory outside the Republic designated by the Board from time to time) in any manner not permitted by the Rules or Code of Professional Conduct prescribed by the Board from time to time;
- 41.7 wilfully refusing, or failing to perform or conform with any of the provisions of these By-laws, which it is his or her duty to do;
- 41.8 committing a breach of any Rule or Code of Professional Conduct prescribed by the Board from time to time in terms of By-law 24 or, after having been previously warned by the Board or any committee appointed by it, continuing to commit a breach of such Rules or Code of Professional Conduct;

- 41.9 unlawfully failing to account for, or unreasonably delaying an accounting of any money or property received for or on behalf of a client or any other person when called upon to do so;
- 41.10 conducting himself or herself in a manner which, in the opinion of the Professional Conduct Committee or the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular or unworthy, or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute.
- 41.11 seeking either before or during the period of training of a trainee accountant to impose any restraint whatever on the trainee accountant concerned, which will apply after the date of the termination of the training period, or threatening or attempting to enforce any such restraints after such date;
- 41.12 directly or indirectly stipulating, or receiving from a trainee accountant who is or has been serving under a training contract, or from any other person any payment, reward, compensation, or consideration for agreeing to the cancellation of such training contract: Provided that it shall not be deemed a breach of this By-law if an associate or former associate requires to be, or is reimbursed in respect of disbursements actually made by him or her to the Institute in connection with a training contract which is subsequently cancelled and of which disbursements he or she is able to produce proof to the satisfaction of the Institute;
- 41.13 without reasonable cause failing to resign from a professional appointment when requested by the client to do so;
- 41.14 failing to answer or deal with appropriately within a reasonable time, any correspondence or other communication from the Institute or any other person which requires a reply or other response;
- 41.15 failing to comply within a reasonable time with an order, requirement, or request from the Institute;
- 41.16 failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute.

Improper conduct on the part of a trainee accountant shall include any conduct which would be improper had it been perpetrated by a member or associate.

## **PART D - APPLICABLE ONLY TO THE COLLEGE OF ACCOUNTING TECHNICIANS**

### **42. Application for associateship**

Application for associateship of the Institute shall be made to the Board in a form prescribed by the Board. Each applicant shall:

- 42.1 pay the application fee, if any, and the subscription for the current year as determined from time to time;
- 42.2 certify in the prescribed form that the information given by him or her therein is true and correct in every detail;
- 42.3 in the event of his or her admission, undertake to observe the provisions of the Constitution and the By-laws and rules framed thereunder from time to time in force; and
- 42.4 satisfy the Board in such manner as it may require that at the date of his or her application, he or she is qualified for admission under By-law 43, that he or she is a fit and proper person to be admitted to associateship and is not less than 21 years of age.

### **43. Qualification for admission to associateship**

Subject to the provisions of By-law 42, qualification for admission to associateship of the Institute shall be proof to the satisfaction of the Board that the applicant has passed the examinations and has the practical experience prescribed by the Board.

### **44. Cancellation of associateship**

- 44.1 The Board shall cancel the associateship of any associate who subsequent to his or her admission to associateship:
  - 44.1.1 is removed from an office of trust on account of misconduct; or
  - 44.1.2 is convicted of theft, fraud, forgery, or uttering a forged document, or perjury, and sentenced in respect thereof to imprisonment without the option of a fine or to a fine of an amount to be determined by the Board from time to time and published by the Board for the information of the members and associates.
- 44.2 The Disciplinary Committee may in its discretion order the cancellation of the associateship of any associate whose estate is provisionally or finally sequestered, or who enters into an

arrangement with his or her creditors subsequent to his or her admission to associateship: Provided, however, that before doing so, the Disciplinary Committee shall afford such associate an opportunity, within 21 days after being called upon by the Disciplinary Committee to do so, to satisfy the committee that there were exceptional circumstances relating to the sequestration or arrangement which would justify the committee's not exercising its discretion to order the cancellation of his or her associateship.

- 44.3 When the associateship of a person is cancelled in terms of By-law 44.1 or 44.2 the Board shall remove his or her name from the register immediately.
- 44.4 A person whose associateship has been cancelled in terms of By-law 44.1 or 44.2 may apply for his or her re-admission as an associate after the expiry of a period of 10 years reckoned from the date of such cancellation, provided, however, that the Board may on the recommendation of the Disciplinary Committee reduce this period in any particular case where it considers that it would be just and equitable to do so.
- 44.5 The Board shall report any cancellation of associateship in terms of By-law 44.1 or 44.2 to members, associates and students and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate: Provided that in the case of the cancellation of associateship in terms of By-law 44.2 it shall comply with any recommendation of the Disciplinary Committee.

#### **45. Fees and subscriptions**

- 45.1 Each associate of the Institute shall pay an annual subscription at such time and of such amount and on such conditions as may from time to time be determined by the Board. The amount of the annual subscription in respect of any category of associateship will be the amount applicable to that category on 1 January of the year in question, irrespective of any change in the category of associateship during the year. Unless and until otherwise so determined, the annual subscription shall be due on the first day of January in each year and shall be payable during that month.
- 45.2 Any associate admitted after 30 June in any year shall pay only one-half of the annual subscription for the year then current.

- 45.3 On admission to the Institute as an associate an entrance fee shall be payable of such amount as may from time to time be determined by the Board.
- 45.4 The Board may in its discretion remit in whole, or in part, the subscription and/or application fee of an associate under special circumstances, which in its opinion warrant such remission.
- 45.5 The Board may from time to time call upon associates for payment of a contribution or contributions for the purpose of meeting expenses which it may incur in the interests and/or furtherance of the objects of the Institute: Provided that such contribution shall not exceed one-quarter of the subscription payable in any one financial year.
- 45.6 Any associate who is in arrear with his or her annual subscription may be required to pay such penalty as may be determined by the Board from time to time. The Board shall from time to time publish the penalties payable under this By-law.
- 45.7 Any associate who is in arrear with his or her annual subscription or any contribution or charge for a period of four months from the date when the same became due under these By-laws shall be sent a registered letter reminding him or her that he or she is in arrear. Should the associate fail to effect payment before the expiration of five months from the date when the amount became due under these By-laws, he or she shall, *ipso facto*, cease to be an associate: Provided that:
- 45.7.1 he or she shall nevertheless be liable to pay the amount of such year's subscription and any other arrear subscriptions, or other contributions or charges due by him or her to the Institute, and shall be liable otherwise as an associate;
- 45.7.2 the Board shall have power in its discretion to suspend the operation of this By-law, either generally or in relation to a specific case, and to stipulate the conditions on which it will be suspended.
- 45.8 The Board may in its discretion reinstate any associate whose associateness has ceased in terms of By-law 45.7 and may in such case dispense with a new application for associateness and/or payment of an entrance fee but may impose a reinstatement fee of an amount to be determined by the Board from time to time.
- 45.9 The Board shall report any cancellation of associateness in terms of By-law 45.8 to associates and may report such cancellation to

whomsoever else it considers appropriate, in whatever manner it considers appropriate.

#### **46. Resignation and re-admission**

- 46.1 Any associate who has paid all his or her dues and subscriptions and is otherwise in good standing may resign his or her associateship by sending to the Board written notice to that effect and such notice shall become effective immediately on acceptance thereof by the Board: Provided always that:
- 46.1.1 if any complaint has been received or an enquiry is pending against such associate in respect of his or her professional conduct, or in respect of the sequestration of his or her estate, whether provisionally or finally, or his or her having entered into an agreement with his or her creditors, such resignation need not be accepted, but his or her associateship may be suspended until such complaint or enquiry has been finally dealt with by the Board;
  - 46.1.2 if no such complaint has been received and no enquiry is pending, the resignation shall be accepted by the Board;
  - 46.1.3 an associate whose associateship has been suspended in terms of By-law 46.1 shall not enjoy the benefits of associateship;
  - 46.1.4 when the resignation is accepted, such acceptance may be qualified or endorsed through the Executive President, so as to record the finding of the Board in respect of such complaint or enquiry.
- 46.2 No resignation once tendered by any associate may be withdrawn without the consent of the Board first having been obtained. Any person who has resigned his or her associateship shall be entitled to re-admission on proof to the Board that he or she complies with the conditions of By-law 42 at the date of his or her application for re-admission.
- 46.3 The Board shall report any resignation of associateship in terms of this By-law to associates and may report such resignation to whomsoever else it considers appropriate, in whatever manner it considers appropriate.

#### **47. Punishable offences**

The following acts and practices, whether of commission or of omission, upon the part of any person who is, or was, an associate of the Institute at the time of the alleged acts or practices shall be offences, and such associate or former associate found guilty thereof as provided in these By-laws shall be liable to the penalties prescribed in these By-laws: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

- 47.1 conducting himself or herself with gross negligence in connection with any work performed by him or her in his or her profession or employment, including, without limitation, work or employment in connection with secretaryships, trusteeships, liquidations, judicial managements, executorships, administratorships or curatorships, or any office of trust which he or she has undertaken or accepted;
- 47.2 contravening any of the provisions of the Chartered Accountants' Designation (Private) Act, No. 67 of 1993;
- 47.3 directly or indirectly paying a person, other than a member or associate in public practice or any person practising as an accountant or auditor outside the Republic, a commission or giving such person monetary or other consideration, as remuneration for bringing the member or associate work, or for inducing other persons to give work to the member or associate;
- 47.4 accepting directly or indirectly any commission, brokerage or other remuneration in respect of professional or commercial business referred to others as an incident to his or her service to any client, except with the knowledge and consent of that client;
- 47.5 improperly obtaining or attempting to obtain work;
- 47.6 soliciting or advertising or canvassing in the Republic (or in any territory outside the Republic designated by the Board from time to time) in any manner not permitted by the Rules or Code of Professional Conduct prescribed by the Board from time to time;
- 47.7 wilfully refusing or failing to perform or conform with any of the provisions of these By-laws, which it is his or her duty to do;
- 47.8 committing a breach of any Rule or Code of Professional Conduct prescribed by the Board from time to time in terms of By-law 24 or, after having been previously warned by the Board or any committee appointed by it, continuing to commit a breach of such Rules or Code of Professional Conduct;

- 47.9 unlawfully failing to account for, or unreasonably delaying an accounting of any money or property received for or on behalf of a client or any other person when called upon to do so;
- 47.10 conducting himself or herself in a manner which, in the opinion of the Professional Conduct Committee or the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular or unworthy or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute.
- 47.11 failing to answer or deal with appropriately within a reasonable time any correspondence or other communication from the Institute or any other person which requires a reply or other response;
- 47.12 failing to comply within a reasonable time with an order, requirement or request from the Institute;
- 47.13 failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute.

## **PART E - APPLICABLE ONLY TO STUDENTS**

### **48. Application for registration as a student**

Application for registration as a student shall be made to the Board in a form prescribed by the Board. Each applicant shall:

- 48.1 pay the application fee, if any, and the subscription for the current year as determined from time to time;
- 48.2 certify in the prescribed form that the information given by him or her therein is true and correct in every detail;
- 48.3 in the event of his or her registration, undertake to observe the provisions of the Constitution and the By-laws and rules framed thereunder from time to time in force; and
- 48.4 satisfy the Board in such manner as it may require that at the date of his or her application, he or she is qualified for registration under By-law 49, and that he or she is a fit and proper person to be registered as a student.

### **49. Qualification for registration as a student**

Subject to the provisions of By-law 48, qualification for registration as a student shall be proof to the satisfaction of the Board that the applicant has passed the examinations, and has the practical experience, prescribed by the Board.

## **50. Cancellation of registration as a student**

- 50.1 The Board shall cancel the registration of any student who subsequent to his or her registration as a student:
- 50.1.1 is removed from an office of trust on account of misconduct; or
  - 50.1.2 is convicted of theft, fraud, forgery, or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine or to a fine of an amount to be determined by the Board from time to time and published by the Board for the information of the members, associates and students.
- 50.2 The Disciplinary Committee may in its discretion order the cancellation of the registration of any student whose estate is provisionally or finally sequestered or who enters into an arrangement with his or her creditors subsequent to his or her registration as a student: Provided, however, that before doing so, the Disciplinary Committee shall afford such associate an opportunity, within 21 days after being called upon by the Disciplinary Committee to do so, to satisfy the committee that there were exceptional circumstances relating to the sequestration or arrangement which would justify the committee's not exercising its discretion to order the cancellation of his or her registration.
- 50.3 When the registration of a person is cancelled in terms of By-law 50.1 or 50.2 the Board shall remove his or her name from the register immediately.
- 50.4 A person whose registration has been cancelled in terms of By-law 50.1 or 50.2 may apply for his or her re-registration as a student after the expiry of a period of 10 years reckoned from the date of such cancellation, provided, however, that the Board may on the recommendation of the Disciplinary Committee reduce this period in any particular case where it considers that it would be just and equitable to do so.
- 50.5 The Board shall report any cancellation of registration in terms of By-law 50.1 or 50.2 to members, associates and students and may report such cancellation to whomsoever else it considers appropriate, in whatever manner it considers appropriate: Provided that in the case of the cancellation of registration in terms of By-law 50.2 it shall comply with any recommendation of the Disciplinary Committee.

## **51. Fees and subscriptions**

- 51.1 Each registered student shall pay an annual subscription at such time and of such amount and on such conditions as may from time to time be determined by the Board. Unless, and until otherwise so determined, the annual subscription shall be due on the first day of April in each year.
- 51.2 Any student registered after 30 September in any year shall pay only one-half of the annual subscription for the year then current.
- 51.3 On registration as a student an entrance fee shall be payable of such amount as may from time to time be determined by the Board.
- 51.4 The Board may in its discretion remit in whole or in part the subscription and/or application fee of a student under special circumstances which in its opinion warrant such remission.

## **52. Resignation and re-registration**

- 52.1 Any student who has paid all his or her dues and subscriptions and is otherwise in good standing may resign as a student by sending to the Board written notice to that effect and such notice shall become effective immediately on acceptance thereof by the Board: Provided always that:
  - 52.1.1 if any complaint has been received or an enquiry is pending against such student in respect of his or her professional conduct, or in respect of the sequestration of his or her estate, whether provisionally or finally or his or her having entered into an agreement with his or her creditors, such resignation need not be accepted but his or her registration may be suspended until such complaint or enquiry has been finally dealt with by the Board;
  - 52.1.2 if no such complaint has been received and no enquiry is pending the resignation shall be accepted by the Board;
  - 52.1.3 a student whose registration has been suspended in terms of By-law 52.1 shall not enjoy the benefits of registration;
  - 52.1.4 when the resignation is accepted, such acceptance may be qualified or endorsed through the Executive President so as to record the finding of the Board in respect of such complaint or enquiry.
- 52.2 No resignation once tendered by any student may be withdrawn without the consent of the Board first having been obtained. Any person who has resigned as a student shall be entitled to re-

registration on proof to the Board that he or she complies with the conditions of By-law 48 at the date of his or her application for re-registration.

### **53. Punishable offences**

The following acts and practices, whether of commission or of omission, upon the part of any person who is or was a student of the Institute at the time of the alleged acts or practices shall be offences, and such student or former student found guilty thereof as provided in these By-laws shall be liable to the penalties prescribed in these By-laws: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

- 53.1 wilfully refusing or failing to perform or conform with any of the provisions of these By-laws, which it is his or her duty to do;
- 53.2 committing a breach of any Rule or Code of Professional Conduct prescribed by the Board from time to time in terms of By-law 24 or, after having been previously warned by the Board or any committee appointed by it, continuing to commit a breach of such Rules or Code of Professional Conduct;
- 53.3 conducting himself or herself in a manner which, in the opinion of the Professional Conduct Committee or the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular or unworthy, or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute;
- 53.4 failing to answer or deal with appropriately within a reasonable time any correspondence or other communication from the Institute or any other person which requires a reply or other response;
- 53.5 failing to comply within a reasonable time with an order, requirement or request from the Institute;
- 53.6 failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute.

## **APPENDIX 1**

For the purposes of the Constitution and By-laws, the Board has determined the following Regions:

- (i) Central Region consisting of the Free State, North-West and Northern Cape provinces;
- (ii) Eastern Region consisting of the Kwazulu Natal province;
- (iii) Northern Region consisting of the Gauteng, Mpumalanga and Limpopo provinces;
- (iv) Southern Region consisting of the Eastern and Western Cape provinces.

For the purposes of the Constitution and the By-laws, the Board has determined the following interest groups:

- (i) The Association for the Advancement of Black Accountants of Southern Africa, more commonly referred to as ABASA;
- (ii) Members in Business interest group;
- (iii) The Large Practices interest group;
- (iv) The Small Practices interest group.