

# SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS

## BY-LAWS AND APPENDICES

### PART A

#### GENERAL PROVISIONS

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##### 1. Definitions

- 1.1. In these By-laws, unless inconsistent with the context, words and phrases will have the same meaning as those defined in paragraph 2 of the Constitution and the following words and phrases will have the meanings reflected below:
- 1.2. **“Associate”** means a person who has satisfied the requirements for associateship pursuant to the By-laws and who has been granted associateship of the Institute; including Associate General Accountant (SA), AGA(SA); Member Accounting Technicians (SA), MAT(SA); and Public Sector Member Accounting Technicians (SA), PSMAT(SA);
- 1.3. **“Board”** means the board of the Institute as referred to in By-law 3 below;
- 1.4. **“Chartered Accountant”** means a person who has satisfied the requirements for membership pursuant to the By-laws and who has been granted membership of the Institute and may use the CA(SA) designation;
- 1.5. **“Chief Executive Officer”** or **“CEO”** means the chief executive officer of the Institute by whatever title he or she may be known;
- 1.6. **“Constitution”** means the constitution of the Institute as amended from time to time;
- 1.7. **“Disciplinary Code and Procedures”** means the code and procedures as specified in Appendix 4;
- 1.8. **“DC”** is the Disciplinary Committee described in more detail in paragraph 7 of the Disciplinary Code and Procedures;
- 1.9. **“Fit and Proper”** in relation to Members; Associates and Trainee Accountants means compliance with the requirements set out in Part A of the Code of Professional Conduct for Chartered Accountants which are:
  - 1.9.1 adherence to ethical standards based on the 5 (five) fundamental principles;
  - 1.9.2 adherence to professional standards and relevant legislation and regulations;

- 1.9.3 behaviour in professional and personal life so as not to discredit themselves; the Institute or the profession of accountancy; and
- 1.9.4 financial integrity, being honest and reliable in professional and personal financial dealings;
- 1.10. **“Good Standing”** means, in relation to a Member or Associate:
  - 1.10.1 that the name of the Member or Associate is on the register of Members and that he or she has not been suspended from membership;
  - 1.10.2 that the Member or Associate has complied with the Continuing Professional Development (CPD) requirements in terms of the Code of Professional Development for Chartered Accountants;
  - 1.10.3 that there are no pending proceedings before the Board or a relevant committee of the Institute to remove the name of the Member or Associate from the register or to suspend him or her from membership; and
  - 1.10.4 that the Member or Associate is up to date with all amounts owed by him or her to the Institute;
- 1.11. **“Institute”** means The South African Institute of Chartered Accountants (SAICA);
- 1.12. **“International Member”** means a Member who is ordinarily resident outside the Republic and who has been so for at least a full year;
- 1.13. **“IRBA”** means the Independent Regulatory Board for Auditors established in terms of the Auditing Profession Act, 26 of 2005;
- 1.14. **“Management Committees”** means the committees appointed by the CEO which assists the CEO in the day-to-day management of the affairs of the Institute;
- 1.15. **“Meetings”** means meetings of the Board, Members and Associates or Council, as the context requires;
- 1.16. **“Member”** shall, unless the contrary intention appears, mean a Chartered Accountant in one or more of the following categories:
- 1.17. **“Long Service Member”** means a Member who has been elected as such by the Board;
- 1.18. **“Honorary Life Member”** means a Member who has been elected as such by the Board;
- 1.19. **“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;
- 1.20. **“Member not in public practice”** means any Member who is not a Member in public practice as defined; and
- 1.21. **“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 25;
- 1.22. **“Month”** means a calendar month commencing on the first day of the month;

- 1.23. “**PCC**” means the Professional Conduct Committee described in more detail in paragraph 7 of the Disciplinary Code and Procedures;
- 1.24. “**Region**” means a region as determined by the Board from time to time and are more fully defined in Appendix 3 to these By-laws;
- 1.25. “**Registered Address**” in respect of any Member, Associate or Trainee Accountant means the address of such Member, Associate or Trainee Accountant last recorded or deemed to have been recorded in terms of By-law 17;
- 1.26. “**Registered with the IRBA**” means any person whose name is entered in the registers established and maintained by the IRBA;
- 1.27. “**Secretariat**” means the officers and employees appointed as such by the Institute in terms of By-law 12;
- 1.28. “**Trainee Accountant**” means an individual who is employed by an accredited training office and who is serving under a SAICA training contract;
- 1.29. “**Training Contract**” means a contract, entered into and registered by SAICA, whereby a Trainee Accountant is duly bound to serve at a training office for a specified period and is entitled to receive experience in the prescribed competencies and which meets the requirements for a learnership agreement in terms of the Skills Development Act, 1998; and
- 1.30. “**Training Office**” means an organisation, accredited by SAICA in terms of the criteria set out in the Training Regulations, whether within or outside the borders of South Africa, and which have been approved by and registered with SAICA as an accredited organisation where prospective CAs(SA) and AGAs(SA) may be trained.

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

- 2.1. 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 governed by the Board comprising the individuals appointed and elected in terms of paragraph 6 of the Constitution. The composition, roles, responsibilities and powers of the Board, are set out in the Board Charter which is attached to these By-laws as **Appendix 1**.

## **4. Council**

- 4.1. The Board will be advised by a Council consisting of the Members appointed in terms paragraph 8 of the Constitution. The composition, function and mandate of the Council are set out in the Council Charter which is attached to these By-laws as **Appendix 2**.

## **5. Eligibility of Board and Council Members**

- 5.1. A person shall not be eligible for appointment to the Board or Council if:
- 5.1.1 he or she is declared mentally unfit or incapable of managing his or her affairs;
  - 5.1.2 he or she is an un-rehabilitated 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;
  - 5.1.3 he or she is convicted in the Republic or elsewhere of any criminal offence of which dishonesty is an element or which, in the opinion of the Board, is of a disgraceful or dishonourable nature, and a period of 10 (ten) years since such conviction has not elapsed;
  - 5.1.4 he or she being a Member, is found by the IRBA or by a DC of the Institute to be guilty of and sentenced to a fine exceeding an amount to be determined by the Board from time to time, or is suspended from membership of the Institute, and a period of 10 (ten) years since such finding by the IRBA or DC of the Institute, as the case may be, has not elapsed; or
  - 5.1.5 he or she not being a Member, is found guilty of misconduct by his or her relevant professional body or is suspended from membership of that body, or has been removed from an office of trust on account of misconduct and a period of 10 (ten) years since such finding of that body has not elapsed.
- 5.2. The appointment of a member of the Board or Council shall terminate ipso facto, and he or she shall vacate his or her office, on the happening of any of the following events:
- 5.2.1 he or she being a Member, ceases to be a Member;
  - 5.2.2 he or she resigns his or her office by notice in writing to the Board or Council;
  - 5.2.3 he or she is absent for more than two consecutive meetings without the leave of the Chairperson;
  - 5.2.4 he or she is declared insane or incapable of managing his or her affairs;
  - 5.2.5 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;
  - 5.2.6 he or she is convicted in the Republic or elsewhere of any criminal offence of which dishonesty is an element or which, in the opinion of the Board, is of a disgraceful or dishonourable nature;
  - 5.2.7 he or she being a Member, is found by the IRBA or by a DC of the Institute to be guilty of misconduct, and sentenced to a Fine exceeding an amount to be determined by the Board from time to time, or is suspended from membership of the Institute;
  - 5.2.8 he or she not being a Member, is found to have been guilty of misconduct by his or her relevant professional body or is suspended from membership of the that body or has been removed from an office of trust on account of misconduct;

5.2.9 if the Member's performance is found to be unsatisfactory by the Board, or on the recommendation of the Nomination and Governance Committee or Council as the case may be; and/or

5.2.10 he or she is removed by a majority vote of the Board or Council respectively, as provided for in the Constitution.

## **6. Regional Councils**

6.1. 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 of the Institute to implement national strategy through facilitating appropriate activities at a regional and district level, including networking, knowledge sharing and social and community based activities.

6.2. The Regional Council shall consist of Members who are resident in that Region, appointed in accordance with the Charter of that Regional Council as approved by the Board, and being consistent with the Constitution with due recognition of the entrenched rights of the Members within the area of jurisdiction of that Regional Council.

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

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

7.1.1 appoint representatives to the Council in accordance with the provisions of the By-laws mutatis mutandis;

7.1.2 assist the Council in communication between Members in the Region and the Board;

7.1.3 advise the Council on the development of Institute strategy;

7.1.4 monitor the implementation of Institute strategy in the Region;

7.1.5 ensure as far as possible that adequate services are being offered to Members in the Region;

7.1.6 work with the Institute in the Region; and

7.1.7 establish district associations, where appropriate groupings of Members exist, and discharge the responsibilities of district associations where district associations do not exist.

## **8. Regional secretariat**

8.1. The CEO, 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.

## **9. Other Interest Groups**

- 9.1. The Board may appoint committees, task groups or interest groups, other than those referred to in the Constitution or in these By-laws, to assist in the performance of its functions and duties in accordance with paragraph 6.3 of the Constitution.
- 9.2. The following provisions apply to all committees and task groups of the Institute unless the Board has agreed to an exclusion or if **Appendix 1** provides otherwise:
  - 9.2.1 one of the members of a committee, interest group or task group may be designated by the Board as Chairperson of the committee. Should the Board not so designate a member as chairperson 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 chairperson;
  - 9.2.2 the Board may determine a quorum for meetings of a committee, interest group or task group, and if not so determined, the quorum shall be fixed by the committee or task group;
  - 9.2.3 any committee, interest group or task group so formed shall comply with any instructions given by the Board and shall keep minutes of its meetings which shall be kept in a bound minute book;
  - 9.2.4 the Board may assign to a committee, interest group 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, interest group or task group and (save in the case the PCC and the DC) it may amend or revoke any decision of such committee, interest group or task group;
  - 9.2.5 any committee, interest group 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; and
  - 9.2.6 the Board shall require each committee, interest group or task group to draft a charter or terms of reference as appropriate and submit them to the Board for approval and are subject to review on an annual basis.
- 9.3. The Board shall form a Nominations and Governance Committee to advise it on the composition of Board committees and the boards of any other entities controlled by the Institute.
- 9.4. The Board shall form an Audit and Risk Committee which shall include at least 2 (two) members who are not members of the Board or employed by the Institute.
- 9.5. The Board should ensure that, at a minimum, there are committees appointed within SAICA to cover the following core areas:
  - 9.5.1 Education - Initial Professional Development;
  - 9.5.2 Assurance;
  - 9.5.3 Financial Reporting/ Accounting Practices;
  - 9.5.4 Ethics; and
  - 9.5.5 Taxation.

**10. Chairperson of meetings**

10.1. The Chairperson of the Board, or in his or her absence, a Lead Independent Board Member, shall preside at all meetings of the Board.

**11. Head office**

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

**12. Secretariat**

12.1. 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 CEO.

**13. Annual financial statements (AFS), Annual Integrated Report (IR) and audit**

13.1. The Board shall cause:

13.1.1 that sufficient and effective internal controls and procurement processes exist;

13.1.2 records to be properly kept of all transactions undertaken in the name of the Institute; and

13.1.3 annual financial statements and an annual integrated 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 and Risk Committee after it has consulted with the CEO 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 Trainee Accountants**

14.1. The Institute 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 Trainee Accountant. In the event of any person ceasing to be a Member, Associate or Trainee Accountant for any reason whatsoever, his or her name shall be deleted from the register.

14.2. The Institute may publish a searchable list of Members, Associates and Trainee Accountants from time to time within the limitations of its regulatory framework.

**15. Certificates of membership and associateship**

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 to the Board.

**16. Death of Member, Associate or Trainee Accountant**

16.1. Upon the Board being satisfied of the death of any Member, Associate or Trainee Accountant, his or her name shall be removed from the register.

**17. Registered Address and notices**

17.1. Every Member, Associate and Trainee Accountant shall provide the Institute with his or her email address and physical address and shall notify it of any change thereof. The addresses in the records of the Institute of persons who are Members, Associates and Trainee Accountants at the commencement of these By-laws shall be deemed to be the email addresses and physical addresses of such Members, Associates or Trainee Accountants.

17.2. Any notice, including notice of disciplinary proceedings, required by these By-laws to be given to a Member, Associate or Trainee Accountant, may be given by sending it to such Member, Associate or Trainee Accountant, at his or her email address or physical address.

17.3. The Institute may elect whether to notify the Member, Associate or Trainee Accountant by email or by delivery of notice to their physical address, and such method of notification shall constitute valid service. Notice shall be deemed to have been served at the time when it was dispatched by email or physically delivered.

**18. Power to make rules**

18.1. 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 PCC and the DC.

**19. Powers and duties of the Chief Executive Officer (CEO)**

19.1. The powers and duties of the CEO in terms of the Constitution and By-laws may be delegated by him or her to an appropriate person in the secretariat but the CEO remains accountable for the way in which the powers and duties were performed.

**20. Rules or Code of Professional Conduct**

20.1. The Board shall have the power to prescribe and amend, from time to time, rules and codes of professional conduct, applicable to Members, Associates and Trainee Accountants.

**21. Amendment of By-laws**

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



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

22.1. 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, Associates or Trainee Accountants or firms or companies controlled by Members, Associates or Trainee Accountants) as the Board shall decide, provided that such associations, bodies or institutions are themselves exempt from liability to pay income tax as a result of being so approved by the Commissioner for the South African Revenue Service.

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

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

## **PART B**

### **PROVISIONS APPLICABLE TO CHARTERED ACCOUNTANTS**

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#### **24. Application for membership**

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

24.1.1 pay the entrance fee, if any, and the subscription for the current year as determined from time to time;

24.1.2 certify in the prescribed form that the information given by him or her therein is true and correct in every detail;

24.1.3 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

24.1.4 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 25, that he or she is a Fit and Proper person to be admitted to membership and is not less than 18 (eighteen) years of age.

24.2. If, prior to his or her application for membership, the applicant:

24.2.1 has been removed from an office of trust on account of misconduct by a committee of the Institute, the Board, any other regulatory body or a court of law; or

24.2.2 has been convicted anywhere in the world of theft, fraud, forgery or issuing a forged document or of perjury, or of any offence of which dishonesty is an element, or any offence which in the opinion of the Board reflects adversely on the applicant's fitness to be a Member, and has been sentenced in respect thereof to imprisonment without the option of a Fine, or to a Fine in an amount to be determined by the Board from time to time,

that applicant will *prima facie* be deemed not to be a Fit and Proper person for admission to membership. The Board shall be entitled to accept the finding of any court of law in any jurisdiction (in respect of which no further appeal lies) establishing any matter mentioned in By-law 24.2.2.

24.3. The Board may require an applicant for membership to provide the Secretariat with the means to verify any information provided by the applicant in support of his or her application for membership, including his or her fingerprints or permission to have access to records relating to the applicant which are maintained by any state agency.

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

25.1. Subject to the provisions of By-law 24, qualification for admission to the Institute shall be proof to the satisfaction of the Board of one of the following:

- 25.1.1 that the applicant has passed the relevant qualifying examinations, and has the required practical experience as per the relevant regulations and rules of the Institute, as amended from time to time; or
- 25.1.2 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.

## **26. Cancellation of membership**

- 26.1. The Board shall cancel the membership of any Member who subsequent to his or her admission to membership:
  - 26.1.1 is removed from an office of trust on account of misconduct; or
  - 26.1.2 is convicted anywhere in the world of theft, fraud, forgery or uttering a forged document or perjury, or an offence of which dishonesty is an element, or an offence which in the opinion of the Board reflects adversely on the fitness of the Member to remain a Member, 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.
  - 26.1.3 is convicted anywhere in the world of a criminal offence in which violence is an element, including but not limited to public violence; murder; rape; sexual assault; robbery; assault and/or torture and is sentenced in respect thereof to imprisonment without the option of a Fine.. Where any such conviction has led to a sanction of imprisonment with an option of a Fine or to a Fine being imposed, the Board shall have the discretion to decide whether or not to cancel membership.
- 26.2. The Board shall be entitled to accept the finding of any court of law in any jurisdiction (in respect of which no further appeal lies) establishing any matter mentioned in By-law 26.1. as a ground for disqualification of the applicant from admission to membership.
- 26.3. A member whose estate has been provisionally or finally sequestrated, subsequent to admission to membership, shall within 21(twenty one) days, satisfy PCC that there were either exceptional or legitimate business related circumstances regarding the sequestration which would justify the PCC not to exercise its discretion to order the cancellation of his/her membership.
- 26.4. For purposes of By-law 26.3 the following shall not be considered to be exceptional circumstances:
  - 26.4.1 the fact that a Member has been provisionally sequestrated and an application for the Member's final sequestration is pending at the time the matter is considered by the PCC; and
  - 26.4.2 the fact that a Member has appealed against an order for his or her final sequestration, and the appeal is pending at the time the matter is considered by the PCC.

- 26.5. For the purposes of By-law 26.3, acts or omissions which in the opinion of the PCC, amount to recklessness; negligence; dishonesty; dishonourable; irregular and/or unworthy conduct, shall not be considered to be legitimate business related circumstances. The PCC may take note of sequestration judgements by competent Courts in formulating its opinion in respect of legitimate business related circumstances.
- 26.6. When the membership of a person is cancelled in terms of By-law 26.1, 26.2 or 26.3 the Board shall remove his or her name from the register immediately, advising the Regional Councils of the action taken and demand from the ex-member the return of his certificate.
- 26.7. A person whose membership has been cancelled in terms of By-law 26.1, 26.2 or 26.3 may apply for his or her re-admission as a Member after he or she has been rehabilitated from his/her sequestered status.
- 26.8. The Board shall send a notice to any Member who has not complied with the Institute's Continuing Professional Development Policy within a period of 4 (four) months from the date on which reporting that Member's compliance with the policy became due, reminding him or her that he or she is not in compliance.
- 26.9. Should the Member fail to comply with the policy, the matter will be dealt with under the provisions of the Disciplinary Code and Procedures.
- 26.10. The Board shall report any cancellation of membership in terms of By-law 26 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 26.3 it shall comply with any recommendation of the PCC.

## **27. Fees and subscriptions**

- 27.1. Each Member, other than Honorary Life Members 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 determined, the annual subscription shall be due on the first day of January in each year and shall be payable during that month unless the member, on application, has been allowed to pay his annual subscription fees through a monthly debit order.
- 27.2. Any Member admitted after 30 June in any year shall pay only one-half of the annual subscription for the year then current.
- 27.3. A person who at the time of his or her application for membership qualifies for international membership shall be placed on the international list.
- 27.4. 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.
- 27.5. 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 the opinion of the Board, warrant such remission.

- 27.6. The Board may from time to time call upon Members, other than Honorary Life Members or Long Service Members, for payment of a contribution or contributions for the purpose of meeting expenses which it may incur in the interests 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 in respect of that financial year.
- 27.7. Any Member who is in arrears 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.
- 27.8. Any Member who is in arrears with his or her annual subscription or any contribution or charge for a period of six months from the date when the same became due under these By-laws, shall be sent a notice, communicated to the member in terms of By-law 17, reminding him or her that he or she is in arrears. Should the Member fail to effect payment before the expiration of eight 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 –
- 27.8.1 he or she shall nevertheless be liable to pay the amount of such year's subscription and any other arrear subscriptions or other contributions, charges and interest due by him or her to the Institute, and shall be liable otherwise as a Member; and
- 27.8.2 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.

## **28. Resignation and readmission**

- 28.1. Any Member who is 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:
- 28.1.1 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 automatically until such complaint or enquiry has been finally dealt with by the Board; the Designated Disciplinary Officer or the relevant committee;
- 28.1.2 if no such complaint has been received within 30 (thirty) days of receipt of the notification and no enquiry is pending at the time of receipt of notification the resignation shall be accepted by the Board;
- 28.1.3 a Member whose membership has been suspended in terms of this By-law 28.1 shall not enjoy any of the benefits of membership; and/or

- 28.1.4 when the resignation is accepted, such acceptance may be qualified or endorsed through the CEO so as to record the finding of the Board in respect of such complaint or enquiry.
- 28.2. No resignation once tendered by any Member may be withdrawn without the consent of the Board first having been obtained after consideration of the reason's advanced for the withdrawal of the resignation.
- 28.3. 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 provisions of By-law 24 read with By-law 25 at the date of his or her application for re-admission.
- 28.4. 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.

**29. Honorary Life Membership and Long Service Membership**

- 29.1. 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.
- 29.2. The Board may elect a Member as a Long Service Members when such Member has:
- 29.2.1 been a Chartered Accountant (SA) for an unbroken period of 40 (forty) years; or
- 29.2.2 attained the age of 65 (sixty-five) years and has been a Chartered Accountant (SA) for an unbroken period of 25 (twenty-five) years.
- 29.3. Honorary Life Members 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.

## **PART C**

### **PROVISIONS APPLICABLE TO THE COLLEGE OF GENERAL ACCOUNTANTS**

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#### **30. Application for associateship**

- 30.1. Application for associateship of the Institute shall be made to the Board in a form prescribed by the Board. Each applicant shall:
- 30.1.1 pay the application fee, if any, and the subscription for the current year as determined from time to time;
  - 30.1.2 certify in the prescribed form that the information given by him or her therein is true and correct in every detail;
  - 30.1.3 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
  - 30.1.4 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 31; that he or she is a Fit and Proper person to be admitted to associateship and is not less than 18 (eighteen) years of age.
- 30.2. The provisions of By-laws 24.1, 24.2 and 24.3 apply, with the necessary changes required by the context, to applications for associateship.

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

- 31.1. Subject to the provisions of By-law 30, 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.

#### **32. Cancellation of associateship**

- 32.1. The Board shall cancel the associateship of any Associate who subsequent to his or her admission to associateship:
- 32.1.1 is removed from an office of trust on account of misconduct by a committee of the Institute, the Board, any other regulatory body or a court of law; or
  - 32.1.2 is convicted anywhere in the world of theft, fraud, forgery, or uttering a forged document or perjury or an offence of which dishonesty is an element, or an offence which in the opinion of the Board reflects adversely on the fitness of the Associate to remain an Associate, 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.
  - 32.1.3 is convicted anywhere in the world of a criminal offence in which violence is an element, including but not limited to public violence; murder; rape; sexual assault; robbery; assault and/or torture and is

sentenced in respect thereof to imprisonment without the option of a Fine.. Where any such conviction has led to a sanction of imprisonment with an option of a Fine or to a Fine being imposed, the Board shall have the discretion to decide whether or not to cancel associateship.

- 32.2. The Board shall be entitled to accept the finding of any court of law in any jurisdiction (in respect of which no further appeal lies) establishing any matter mentioned in By-law 32.1.2 as a ground for disqualification of the applicant from admission to associateship.
- 32.3. A Associate whose estate has been provisionally or finally sequestrated, subsequent to admission to Associateship, shall within 21(twenty one) days, satisfy PCC that there were either exceptional or legitimate business related circumstances regarding the sequestration which would justify the PCC not to exercise its discretion to order the cancellation of his/her Associateship.
- 32.4. For purposes of By-law 32.3 the following shall not be considered to be exceptional circumstances:
  - 32.4.1 the fact that an Associate has been provisionally sequestrated and an application for the Associate's final sequestration is pending at the time the matter is considered by the PCC; and
  - 32.4.2 the fact that an Associate has appealed against an order for his or her final sequestration, and the appeal is pending at the time the matter is considered by the PCC.
- 32.5. For the purposes of By-law 26.3, acts or omissions which in the opinion of the PCC, amount to recklessness; negligence; dishonesty; dishonourable; irregular and/or unworthy conduct, shall not be considered to be legitimate business related circumstances. The PCC may take note of sequestration judgements by competent Courts in formulating its opinion in respect of legitimate business related circumstances.
- 32.6. When the associateship of a person is cancelled in terms of By-law 32.1, 32.2 or 32.3 the Board shall remove his or her name from the register immediately.
- 32.7. A person whose Associateship has been cancelled in terms of By-law 26.1, 26.2 or 26.3 may apply for his or her re-admission as an Associate after he or she has been rehabilitated from his/her sequestrated status.
- 32.8. The Board shall report any cancellation of associateship in terms of By-law 32.1, 32.2 or 32.3 to Members and Associates 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 32.3 it shall comply with any recommendation of the PCC.
- 32.9. The Board shall report any cancellation of associateship in terms of By-law 32 to Associates 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 32.3 it shall comply with any recommendation of the PCC.



### 33. Fees and subscriptions

- 33.1. 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 determined, the annual subscription shall be due on the first day of January in each year and shall be payable during that month.
- 33.2. Any Associate admitted after 30 June in any year shall pay only one-half of the annual subscription for the year then current.
- 33.3. On admission to the Institute as an Associate an entrance fee shall be payable in such amount as may from time to time be determined by the Board.
- 33.4. 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.
- 33.5. 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 or furtherance of the objects of the Institute, provided that such contribution shall not in any one financial year exceed one-quarter of the subscription payable in respect of that financial year.
- 33.6. Any Associate who is in arrears 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.
- 33.7. Any Associate who is in arrears with his or her annual subscription or any contribution or charge for a period of six months from the date when the same became due under these By-laws shall be sent a notice, communicated to the Associate in terms of By-law 17, reminding him or her that he or she is in arrears. Should the Associate fail to effect payment before the expiration of eight 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 -
  - 33.7.1 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; and
  - 33.7.2 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.
- 33.8. The Board may in its discretion reinstate any Associate whose associateship has ceased in terms of By-law 33.7 and may in such case dispense with a new application for associateship 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.

- 33.9. The Board shall report any cancellation of associateship in terms of By-law 33.7 to Associates and may report such cancellation to whomsoever else it considers appropriate; in whatever manner it considers appropriate.

**34. Resignation and re-admission**

- 34.1. 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:
- 34.1.1 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; the Designated Disciplinary Officer or the relevant committee;
- 34.1.2 if no such complaint has been received and no enquiry is pending the resignation shall be accepted by the Board;
- 34.1.3 an Associate whose associateship has been suspended in terms of By-law 34.1 shall not enjoy the benefits of associateship; and/or
- 34.1.4 when the resignation is accepted, such acceptance may be qualified or endorsed through the CEO so as to record the finding of the Board in respect of such complaint or enquiry.
- 34.2. 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 provisions of By-law 30 read with By-law 31 at the date of his or her application for re-admission.
- 34.3. 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.

**35. Honorary Life Associateship and Long Service Associateship**

- 35.1. The Board may, in special circumstances, recognise the meritorious service of an Associate towards the Institute, or the accountancy profession, by electing such Associate as an Honorary Life Associate.
- 35.2. The Board may elect an Associate as a Long Service Associate when such Associate has:
- 35.2.1 been an Associate for an unbroken period of 40 (forty) years; or
- 35.2.2 attained the age of 65 (sixty-five) years, provided that he or she has been an Associate for an unbroken period of 25 (twenty-five) years.

35.3. Honorary Life Associates 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.

## **PART D**

### **PROVISIONS APPLICABLE TO THE COLLEGE OF ACCOUNTING TECHNICIANS**

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#### **36. Application for associateship**

- 36.1. Application for associateship of the Institute as either Member Accounting Technicians (SA), MAT(SA) or Public Sector Member Accounting Technicians (SA), PSMAT(SA) shall be made to the Board in a form prescribed by the Board. Each applicant shall:
- 36.1.1 pay the application fee, if any, and the subscription for the current year as determined from time to time;
  - 36.1.2 certify in the prescribed form that the information given by him or her therein is true and correct in every detail;
  - 36.1.3 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
  - 36.1.4 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 37, that he or she is a Fit and Proper person to be admitted to associateship and is not less than 18 (eighteen) years of age.
- 36.2. The provisions of By-laws 24.1, 24.2 and 24.3 apply, with the necessary changes required by the context, to applications for associateship.
- 36.3. The above notwithstanding, individuals transferred from Accounting Technicians (SA), AT(SA) to the Institute during 2019, will be deemed to be Associates of the Institute under these By-laws.

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

- 37.1. Subject to the provisions of By-law 36, qualification for admission to associateship of the Institute shall be proof to the satisfaction of the Board that the applicant has achieved the relevant qualifications; passed the relevant examinations, and has the practical experience, prescribed by the Board.

#### **38. Cancellation of associateship**

- 38.1. The Board shall cancel the associateship of any Associate who subsequent to his or her admission to associateship:
- 38.1.1 is removed from an office of trust on account of misconduct; or
  - 38.1.2 is convicted anywhere in the world of theft, fraud, forgery, or uttering a forged document or perjury or an offence of which dishonesty is an element, or an offence which in the opinion of the Board reflects adversely on the fitness of the Associate to remain an Associate, 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.

- 38.1.3 is convicted anywhere in the world of a criminal offence in which violence is an element, including but not limited to public violence; murder; rape; sexual assault; robbery; assault and/or torture and is sentenced in respect thereof to imprisonment without the option of a Fine.. Where any such conviction has led to a sanction of imprisonment with an option of a Fine or to a Fine being imposed, the Board shall have the discretion to decide whether or not to cancel Associateship.
- 38.2. The Board shall be entitled to accept the finding of any court of law in any jurisdiction (in respect of which no further appeal lies) establishing any matter mentioned in 38.1 as a ground for disqualification of the applicant from admission to associateship.
- 38.3. An Associate whose estate has been provisionally or finally sequestered, subsequent to admission to Associateship, shall within 21(twenty one) days, satisfy PCC that there were either exceptional or legitimate business related circumstances regarding the sequestration which would justify the PCC not to exercise its discretion to order the cancellation of his/her Associateship.
- 38.4. For purposes of By-law 38.3 the following shall not be considered to be exceptional circumstances:
- 38.4.1 the fact that an Associate has been provisionally sequestered and an application for the Associate's final sequestration is pending at the time the matter is considered by the PCC; and
- 38.4.2 the fact that an Associate has appealed against an order for his or her final sequestration, and the appeal is pending at the time the matter is considered by the PCC.
- 38.5. For the purposes of By-law 26.3, acts or omissions which in the opinion of the PCC, amount to recklessness; negligence; dishonesty; dishonourable; irregular and/or unworthy conduct, shall not be considered to be legitimate business related circumstances. The PCC may take note of sequestration judgements by competent Courts in formulating its opinion in respect of legitimate business related circumstances.
- 38.6. When the associateship of a person is cancelled in terms of By-law 38.1, 38.2 or 38.3 the Board shall remove his or her name from the register immediately.
- 38.7. A person whose membership has been cancelled in terms of By-law 26.1, 26.2 or 26.3 may apply for his or her re-admission as a Member after he or she has been rehabilitated from his/her sequestered status.
- 38.8. The Board shall report any cancellation of associateship in terms of By-law 38 to Members and Associates 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 38.3 it shall comply with any recommendation of the PCC.

### 39. Fees and subscriptions

- 39.1. 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 determined, the annual subscription shall be due on the first day of January in each year and shall be payable during that month.
- 39.2. Any Associate admitted after 30 June in any year shall pay only one-half of the annual subscription for the year then current.
- 39.3. 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.
- 39.4. 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.
- 39.5. 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 or furtherance of the objects of the Institute, provided that such contribution shall not in any one financial year exceed one-quarter of the subscription payable in respect of that financial year.
- 39.6. Any Associate who is in arrears 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.
- 39.7. Any Associate who is in arrears with his or her annual subscription or any contribution or charge for a period of six months from the date when the same became due under these By-laws shall be sent a notice, communicated to the Associate in terms of By-law 17, reminding him or her that he or she is in arrears. Should the Associate fail to effect payment before the expiration of eight 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 -
  - 39.7.1 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; and
  - 39.7.2 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.
- 39.8. The Board may in its discretion reinstate any Associate whose associateship has ceased in terms of By-law 39.7 and may in such case dispense with a new application for associateship 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.

- 39.9. The Board shall report any cancellation of associateship in terms of By-law 39.7 to Associates and may report such cancellation to whomsoever else it considers appropriate; in whatever manner it considers appropriate.

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

- 40.1. 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:
- 40.1.1 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; the Designated Disciplinary Officer or the relevant committee;
- 40.1.2 if no such complaint has been received and no enquiry is pending the resignation shall be accepted by the Board;
- 40.1.3 an Associate whose associateship has been suspended in terms of By-law 40.1 shall not enjoy the benefits of associateship; and/or
- 40.1.4 when the resignation is accepted, such acceptance may be qualified or endorsed through the CEO so as to record the finding of the Board in respect of such complaint or enquiry.
- 40.2. 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 provisions of By-law 36 read with By-law 37 at the date of his or her application for re-admission.
- 40.3. 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.

#### **41. Honorary Life Associateship and Long Service Associateship**

- 41.1. The Board may, in special circumstances, recognise the meritorious service of an Associate towards the Institute, or the accountancy profession, by electing such Associate as an Honorary Life Associate.
- 41.2. The Board may elect an Associate as a Long Service Associate when such Associate has:
- 41.2.1 been an Associate for an unbroken period of 40 (forty) years; or
- 41.2.2 attained the age of 65 (sixty-five) years, provided that he or she has been an Associate for an unbroken period of 25 (twenty-five) years.

41.3. Honorary Life Associates 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.



## APPENDIX 1: BOARD CHARTER

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### 1. INTRODUCTION

- 1.1. The Board (“**the Board**”) of The South African Institute of Chartered Accountants (“**the Institute**”) has prepared this Charter (“**the Board Charter**”) in accordance with the principles contained in the King IV Report on Corporate Governance™ for South Africa, (“**King IVTM**”). The Board Charter is subject to the provisions of the Constitution of the Institute (“**the Constitution**”) and the By-laws of the Institute (“**the By-laws**”).
- 1.2. The Board Charter does not replace or amend the Constitution or any part of the By-laws in any way whatsoever. In the event of a conflict between the Constitution and the By-laws, the Constitution shall prevail.
- 1.3. Words and phrases defined in the Constitution and the By-laws will have the same meanings for purposes of the Board Charter, unless the context indicates otherwise.

### 2. PURPOSE

- 2.1. The purpose of this Board Charter is to set out:
  - 2.1.1. the roles, responsibilities and powers of: (i) the Board; (ii) the individual members of the Board (“**Board Members**”); and (iii) the officials and executives of the Institute;
  - 2.1.2. the powers delegated to various Board committees of the Institute; and
  - 2.1.3. the policies and practices of the Board in respect of matters such as corporate governance, declarations and conflicts of interest, meeting procedures, composition of the Board, and the nomination, appointment, induction, training and evaluation of Board Members and members of Board committees.

### 3. COMPOSITION OF THE BOARD, GENDER AND RACE DIVERSITY POLICY, APPOINTMENT, ROTATION AND INDEPENDENCE

- 3.1. The Board must at all times be suitably constituted and shall do everything necessary to appropriately fulfil its role and responsibilities.
- 3.2. The Board may determine the number of Board Members at any time, subject to the proviso that:
  - 3.2.1. the minimum number of Board Members is 8 (eight);
  - 3.2.2. the maximum number of Board Members is 12 (twelve); and
  - 3.2.3. the composition of the Board must be diverse and must have an appropriate mix of race, gender and diversity.
- 3.3. Guidelines for the preferred attributes, knowledge and skills of Board Members are set out in **Appendix A** which together with diversity requirements, shall form the basis of Board Member selection criteria.

- 3.4. The Board shall comprise a balance of executive and non-executive Board Members, with a majority of the Board Members being independent. Subject to the requirement that:
- 3.4.1. the majority of Board Members shall be Chartered Accountants CA(SA); and
  - 3.4.2. a maximum of 3 (three) and not less than 2 (two) of the non-executive Board Members must be non-Chartered Accountants and shall be independent.
- 3.5. The President of the Council or his/her nominee shall be an ex officio Board Member.
- 3.6. In reviewing independence of a Board Member, the definitions of King IVTM must be considered. In particular, a Board Member may be determined to be independent if, when judged from the perspective of a reasonable and informed third party, that Board Member has no interest, position, association or relationship which is likely to unduly influence or cause bias in decision-making in the best interests of the Institute; provided that membership of the Institute will not automatically result in a presumption of a lack of independence.
- 3.7. After each annual general meeting (“**AGM**”) the Board must elect a chairperson of the Board (“**Chairperson**”) and a lead independent non-executive Board Member (“**Lead Independent Board Member**”).
- 3.8. The Board must appoint a CEO.
- 3.9. The CEO and his/her nominated senior executive will serve as ex officio members of the Board.
- 3.10. The Board is empowered to fill casual vacancies on the Board up until the next AGM.
- 3.11. Only individuals with sound ethical reputations and business or professional expertise and who have sufficient time to effectively fulfil their role as a Board Member, will be considered for appointment to the Board.
- 3.12. Individuals with material enduring conflicts of interest with the Institute or any of its directly or indirectly associated entities that cannot be reasonably managed by the normal methods of declaration of interests and temporary recusal from meetings will not be considered for appointment.
- 3.13. Board Members must be nominated for election or appointment through a formal process and the Nomination and Governance Committee must assist with the process of identifying suitable candidates to be discussed with the Council and proposed to the Board and the members of the Institute (the “**Members**”). The Nomination and Governance Committee must also assist with the review of the effectiveness of the Board, including but not necessarily limited to, its composition.
- 3.14. Race, gender, disability and diversity, as well as relevant skills and expertise and knowledge of the core skills of the profession, enhance the composition of a truly diverse Board and assist in achieving a sustainable competitive advantage for the profession. It is the policy of the Board that all facets of diversity will be considered in determining the optimal composition of the Board which, where possible, will be balanced appropriately. All appointments to the Board are made on merit, having due regard for the benefits of diversity, including gender, race and disability, which the Board as a whole requires to be effective.

- 3.15. The Nomination and Governance Committee may determine measurable objectives for achieving diversity on the Board that are appropriate for the Institute, and may recommend them to the Board for adoption.
- 3.16. The achievement of the objectives referred to in paragraph 3.15 above will be disclosed in the integrated report of the Institute.
- 3.17. Board Members shall be elected by the members of the Institute at an AGM. Board Members appointed by the Board to fill a casual vacancy, must retire at the first subsequent AGM unless their appointment is confirmed at such Members' meeting. One-third of Board Members (excluding the ex officio members) must retire by rotation at each AGM provided that each such Board Member has served as a Board Member for at least 1 (one) year. The Board Members who retire will be those Board Members who have held office for the longest period of time since their last election. Should there be more Board Members than necessary who have been on the Board for an equal length of time, those to retire shall be chosen by lots.
- 3.18. Retiring Board Members may be re-elected provided that they are eligible. If at the date of the AGM, any Board Member has held office for a period in excess of 3 (three) years since his/her last election, he or she shall retire at such AGM, either as one of the Board Members subject to rotation or in addition thereto.
- 3.19. No Board Member shall serve for a period exceeding 6 (six) years. Should he or she be appointed to fill a vacancy or appointed at a meeting other than an AGM, then the 6 (six) years shall be determined from the date of the first AGM subsequent to their appointment.
- 3.20. A Board Member who has completed a 6 (six) year term, shall be eligible for re-election to the Board after a period of 3 (three) years subsequent to their last service for a term as defined in paragraph 3.19.
- 3.21. Executive Board Members are required to retire from the Board when they cease to hold executive office for any reason. Executive Board Members must retire as members of management at the age of 65 (sixty-five) unless the Board agrees to a later retirement age in any particular case in the interests of the Institute. Such extensions will:
  - 3.21.1. only be agreed to in very exceptional circumstances; and
  - 3.21.2. not be for long periods of time.
- 3.22. This Board Charter is considered an integral part of the conditions of appointment of all Board Members and should be referred to in letters of appointment.

#### **4. DEVELOPMENT AND INDUCTION OF BOARD MEMBERS**

- 4.1. A formal induction program is established for new Board Members, which includes the opportunity for new Board Members to understand key strategies and operations before their first meeting.
- 4.2. Training will be provided to individual Board Members on request and Board Members may be developed through mentorship and professional development programmes.
- 4.3. Continuing professional development programmes are implemented which ensure that Board Members are continually apprised of new developments and changes in the profession's environment.

## 5. ROLES AND RESPONSIBILITIES

### 5.1. Member meetings

5.1.1. The matters reserved for decision-making by the Members are set out in the Constitution. A matter reserved for decision-making by the Members must be considered by the Board before it is recommended to the Members for decision-making. The Board must, where appropriate, provide the Members with its recommendation and relevant material information in respect of resolutions proposed for Member approval.

5.1.2. Information must be accurately disclosed to Members and potential members in such a way that they are apprised of all material aspects of the business of the Institute.

5.1.3. Board Members and executive management are expected to attend Member meetings. The Chairperson of each Board committee is expected to be available at the AGM to respond to relevant questions or queries.

### 5.2. The Board: General Powers

5.2.1. The role, functions and powers of the Board, the Board Members and Board committees are determined by the relevant laws of the Republic of South Africa ("Applicable Laws"), the Constitution, best practice and decisions and policies of the Board.

5.2.2. The Board is responsible for leading the Institute, setting its strategic direction and ensuring that policies, plans and a funding model are in place to achieve the purpose, objects and strategy of the Institute. In governing or directing the affairs of the Institute, the Board has the authority to exercise all powers and perform any functions except to the extent that the Constitution provides otherwise.

5.2.3. The Board accordingly has the power to make any decision in respect of the Institute which has not been specifically reserved for decision-making by the Members.

5.2.4. The Board has the power to delegate specific powers and functions to Board and other committees and the CEO as detailed in approved committee terms of reference and the Delegation of Authority Document.

5.2.5. The Board must exercise its powers responsibly:

5.2.5.1. in the best interests of the Institute with due regard to the interest of the Members; and

5.2.5.2. in compliance with the requirements of the law and principles of sound corporate governance.

### 5.3. The Roles and Responsibilities of the Board

#### 5.3.1. The Board must:

5.3.1.1. retain full and effective control over the Institute and its tangible and intangible assets, bringing independent, informed and effective judgment to bear on material decisions;

5.3.1.2. provide effective and ethical leadership in the best interests of the members and associates of the Institute;

- 5.3.1.3. act as the focal point for, and custodian of, corporate governance by managing its relationship with management, the members and other stakeholders of the Institute along sound corporate governance principles;
- 5.3.1.4. promote and monitor that the membership composition is representative of the national demographics of South Africa in terms of cultural, social, racial and gender representation;
- 5.3.1.5. ensure that relevant stakeholders, including Members, are updated on the implementation of the strategy and other significant issues; and
- 5.3.1.6. appreciate that strategy, risk, performance and sustainability are inseparable and to give effect to this by:
  - 5.3.1.6.1. contributing to and approving the strategy of the Institute, including its short, medium and long-term strategic direction;
  - 5.3.1.6.2. satisfying itself that the strategy and business plans of the Institute do not give rise to risks that have not been thoroughly assessed by management;
  - 5.3.1.6.3. identifying key performance and risk areas, and ensure that management has adequate risk mitigation strategies in place;
  - 5.3.1.6.4. ensuring that the strategy will result in sustainable outcomes and value creation and achieve the purpose and objects of the Institute; and
  - 5.3.1.6.5. considering sustainability as a business opportunity that guides strategy formulation;
- 5.3.1.7. oversee the disciplinary process with regard to Members, associates and trainees of the Institute by:
  - 5.3.1.7.1. ensuring that the Institute has adequate resources for investigative and disciplinary processes;
  - 5.3.1.7.2. appointing an independent disciplinary panel from which the PCC and DC are constituted;
  - 5.3.1.7.3. satisfying itself that the approved disciplinary process is followed by the PCCs and DCs;
  - 5.3.1.7.4. ensuring that the impact of the approved disciplinary process meets, and continues to meet, the expectations of the profession and its stakeholders; and
  - 5.3.1.7.5. accounting to Members and society on the outcomes of disciplinary proceedings;
- 5.3.1.8. ensure that the Institute is and is seen to be a responsible corporate citizen by having regard to not only the financial aspects of the business of the Institute but also the impact that its operations have on the environment and the society within which it operates;
- 5.3.1.9. determine the Institute's values and ensure that the Institute's ethics are managed effectively;

- 5.3.1.10. ensure the governance of risk with the support of the Audit and Risk Committee;
- 5.3.1.11. exercise ongoing oversight of information and technology governance, delegated to the Digital Transformation Governance Committee (“DTGC”) (which shall include the Chief Information Officer) which shall report relevant risks and other material matters to the Board and its committees;
- 5.3.1.12. monitor the Institute’s compliance with applicable laws and non-binding rules and standards with reference not only to the obligations they create but to the rights and protections they afford and ensure that the Institute is governed effectively in accordance with corporate governance best practices;
- 5.3.1.13. ensure that there is an effective risk-based internal audit function;
- 5.3.1.14. ensure that members are equitably treated, and ensure that disputes are resolved as effectively, efficiently and expeditiously as possible;
- 5.3.1.15. ensure that the Institute has appropriately constituted and effective Board committees as required by the Constitution and such best corporate governance practices as the Institute chooses to adopt and ensure that these committees discharge their duties appropriately;
- 5.3.1.16. monitor the activities of trusts, non-profit organisations and social responsibility projects established by the Institute, as determined in the Delegation of Authority;
- 5.3.1.17. govern the disclosure control processes of the Institute including ensuring the integrity of the integrated report and reporting on the effectiveness of the system of internal controls;
- 5.3.1.18. table the following at each AGM:
  - 5.3.1.18.1. the annual financial statements and integrated report;
  - 5.3.1.18.2. the reports by the Chairperson and the CEO;
  - 5.3.1.18.3. the report by the external auditors;
  - 5.3.1.18.4. the recommendation for the appointment of the external auditors;
  - 5.3.1.18.5. recommendations for the election and re-election of Board Members;
  - 5.3.1.18.6. the fees for Board Members and Board committee members for the ensuing year;
  - 5.3.1.18.7. the Remuneration Policy for approval (non-binding vote); and
  - 5.3.1.18.8. the report on implementation of the Remuneration Policy for approval (non-binding vote);
- 5.3.1.19. to automatically terminate a membership; associateship or traineeship where -
  - 5.3.1.19.1. the Member; Associate or Trainee Accountant is convicted of any criminal offence involving a breach of trust; or

- 5.3.1.19.2. the Member, Associate or Trainee Accountant is removed by any civil or criminal court or tribunal from an office of trust; or
- 5.3.1.19.3. the Member, Associate or Trainee Accountant is found by any court or tribunal to have abused an office of position of trust or breached a fiduciary duty, provided that the Board may, in exceptional circumstances, impose a less severe sanction than termination.

#### 5.4. The Chairperson

5.4.1. The Chairperson is elected by the Board after each AGM and is an independent non-executive member of the Board with no executive or management responsibilities. The Chairperson provides leadership at Board level, represents the Board to the Members and is responsible for ensuring the integrity and effectiveness of the Board and its committees. The Chairperson is also the Chairperson of the meetings of members.

5.4.2. In particular, the Chairperson must:

- 5.4.2.1. Ensure effective operation of the Board and its committees in conformity with the highest standards of corporate governance by setting an ethical tone for the Board and the Institute and providing overall leadership to the Board while being cognizant of the individual duties of the Board Members;
- 5.4.2.2. ensure effective communication with Council, Members, regulators, governments and other relevant constituencies and that the views of these groups are understood by the Board;
- 5.4.2.3. oversee the formal succession plan for the Board, the CEO, the Chief Financial Officer (“CFO”); and the Chief Operating Officer (“COO”) or the person responsible for that function;
- 5.4.2.4. be accessible to the CEO to support the CEO in the development of strategy and to provide counsel and advice in respect of all material matters affecting the Institute and to consult with the other Board Members promptly when appropriate;
- 5.4.2.5. be involved, as Chairperson of the Nomination and Governance Committee, in the identification and selection of Board Members;
- 5.4.2.6. play an active part in the formulation (in consultation with the CEO and the secretary of the Board (“the Secretary”)) of an annual work plan for the Board and the setting of the agenda for Board meetings, ensuring that material matters in respect of the business and governance of the Institute are tabled at Board meetings;
- 5.4.2.7. preside over Board meetings, setting the style and tone of Board discussions to promote constructive debate and effective decision-making;
- 5.4.2.8. manage conflicts of interest and act as a link between the Board and management, particularly the Board and the CEO;
- 5.4.2.9. ensure that Board Members play a full and constructive role in the affairs of the Institute and take a leading role in the process for

removing non-performing or unsuitable or over-committed members from the Board;

- 5.4.2.10. oversee the evaluation of the Board's effectiveness and performance, ensuring that formal performance evaluations of the Board, Board committees and individual Board Members are conducted at least every 2 (two) years and that every alternate year, opportunity is provided for reflection and discussion by the Board regarding its performance as a whole, and the performance of: (i) its committees, (ii) the Chairperson; and (iii) the individual Board Members;
- 5.4.2.11. ensure that all Board committees are properly established, composed and operated;
- 5.4.2.12. in consultation with the Board, determine the performance objectives of the CEO;
- 5.4.2.13. establish a harmonious and open relationship with the CEO;
- 5.4.2.14. ensure that good relations are maintained with the Members and strategic stakeholders; and
- 5.4.2.15. attend to administrative acts in respect of the CEO as required.

#### 5.4.3. The Chairperson:

- 5.4.3.1. may not be a member of the Audit and Risk Committee;
- 5.4.3.2. may be a member but not the chairperson of the Human Resources and Remuneration Committee;
- 5.4.3.3. must be a member and chairperson of the Nomination and Governance Committee;
- 5.4.3.4. may be a member but not the chairperson of the Social, Ethics and Transformation Committee;
- 5.4.3.5. may be a member but not the chairperson of the Digital Transformation Governance Committee; and
- 5.4.3.6. may not be a member of Council.

5.4.4. The evaluation of the Chairperson's performance will be led by the Lead Independent Board Member or any other independent non-executive Board Member appointed by the Board at least every 2 (two) years.

5.4.5. The evaluation should take into account the Chairperson's performance against formal criteria and other non-Institute responsibilities to determine whether the Chairperson has the capacity to discharge his/her duties.

#### 5.5. Lead Independent Board Member

5.5.1. The Board must appoint a Lead Independent Board Member who is a non-executive member of the Board with no executive or management responsibilities and is not a member of Council to assist the Chairperson in the execution of his/her duties and such other functions as the Board may wish to delegate to the Lead Independent Board Member. The Lead Independent Board Member's appointment shall be reviewed and confirmed annually after the AGM.



5.5.2. Where the Chairperson is absent or unable to perform his/her duties or where the independence of the Chairperson is questionable or impaired, the Lead Independent Board Member must serve in this capacity for as long as the circumstances that caused the Chairperson's absence, inability or conflict exist.

5.5.3. The Lead Independent Board Member must:

- 5.5.3.1. preside at all meetings of the Board at which the Chairperson is not present or where the Chairperson is conflicted, including any sessions of the independent Board Members;
- 5.5.3.2. assist the Board in dealing with the management of any actual or perceived conflicts of interest that may arise on the part of the Chairperson;
- 5.5.3.3. call additional meetings of the non-executive Board Members, if required;
- 5.5.3.4. facilitate open discussions during Board meetings, any executive sessions and outside of Board meetings;
- 5.5.3.5. perform all such functions that cannot be performed by the Chairperson due to his/her absence or the existence of a conflict of interest;
- 5.5.3.6. perform any duties as delegated by the Board from time to time;
- 5.5.3.7. Serve as the principal liaison between the non-executive Board Members and the Chairperson without inhibiting direct communication between them;
- 5.5.3.8. communicate to the Chairperson and management, where necessary: (i) any decisions reached; or (ii) suggestions, views or concerns expressed, by the non-executive Board Members in executive sessions or outside of Board meetings; and
- 5.5.3.9. if appropriate, and in coordination with the Chairperson and management, be available for consultation and direct communication with Members.

5.6. Chief Executive Officer (CEO)

5.6.1. The CEO is delegated with authority from, and accountable to the Board for the development and successful implementation of the Group strategy and the overall management and performance of the Institute to achieve its purpose and goals.

5.6.2. The CEO is supported by his/her senior Management Committees as agreed with the Board.

5.6.3. The CEO:

- 5.6.3.1. must provide executive leadership;
- 5.6.3.2. must inform the Board of any material matter which may have a significant impact on the financial results or substantially impact the reputation of the Institute;
- 5.6.3.3. may sub-delegate any of the powers delegated to him/her; and

- 5.6.3.4. may exercise power and authority on, or sub-delegate, any matter necessary for the effective management and performance of the Institute that is not specifically reserved for the Board or the Members.
  - 5.6.4. The CEO's role is formalised and his/her performance is evaluated by the Chairperson with the support of the Nominations and Governance Committee against specific performance criteria.
  - 5.6.5. The CEO may not be a member of:
    - 5.6.5.1. the Human Resources and Remuneration Committee;
    - 5.6.5.2. the Audit and Risk Committee;
    - 5.6.5.3. the Nomination and Governance Committee; or
    - 5.6.5.4. the Digital Transformation Governance Committee,but may attend meetings of such committees by invitation only and must recuse himself/herself when conflicts arise, particularly when his/her performance and remuneration are discussed.
  - 5.6.6. The Board should ensure that a succession plan is in place for the CEO.
- 5.7. The rights and duties of the Board and its members
- 5.7.1. The Board must exercise its functions collectively and no single Board Member has any authority to perform any act on behalf of the Institute unless specifically authorised or requested by the Board. Board Members are jointly accountable for the decisions of the Board.
  - 5.7.2. Board Members have a fiduciary obligation to:
    - 5.7.2.1. act in the best interests of the Institute;
    - 5.7.2.2. act with due care, diligence and skill in discharging their duties as Board Members;
    - 5.7.2.3. declare and avoid conflicts of interest; and
    - 5.7.2.4. account to the Institute for any advantages gained in discharging their duties on behalf of the Institute.
  - 5.7.3. Board Members may, at any time, request a meeting with the Chairperson and must individually meet with the Chairperson on an annual basis to discuss the Board and committee matters. The Chairperson must invite non-executive Board Members from time to time to indicate whether they have a need to meet as a group without him/her and/or the executive management.
- 5.8. Secretary
- 5.8.1. The Board should be assisted by a competent, suitably qualified and experienced Secretary. The decision to appoint or remove the Secretary is a Board decision.
  - 5.8.2. The Secretary must provide dedicated support to the Board and is a central source of guidance and support to the Board and within the Institute on matters of good governance and changes in legislation. The Secretary must consult regularly with Board Members to ensure that they receive all necessary information.

- 5.8.3. As gatekeeper of good governance, the Secretary must maintain an arm's length relationship with the Board and its members as far as is reasonably possible.
- 5.8.4. The Secretary is not a member of the Board and has a direct channel of communication to the Chairperson and the Lead Independent Board Member.
- 5.8.5. The Board must consider and satisfy itself, on an annual basis, of the competence, qualifications and experience of the Secretary and report thereon in the integrated report.
- 5.8.6. The Secretary is accountable to the Board and must:
  - 5.8.6.1. ensure that Board procedures are followed and reviewed regularly;
  - 5.8.6.2. ensure that the applicable rules and regulations for the conduct of the affairs of the Board as directed by the provisions of the Constitution and the Board Charter are complied with;
  - 5.8.6.3. maintain statutory records in accordance with the Applicable Laws;
  - 5.8.6.4. provide the Board as a whole, as well as individual Board Members, with guidance as to how their responsibilities should be properly discharged in the best interest of the Institute and good governance. The Secretary is authorised to obtain external expert advice, at the Institute's expense, should he or she deem it necessary in order to effectively fulfil this responsibility;
  - 5.8.6.5. keep abreast of, and inform the Board of current corporate governance thinking and practice;
  - 5.8.6.6. assist with the appointment of Board Members;
  - 5.8.6.7. advise the Board on all legal and regulatory matters, including legal frameworks and processes;
  - 5.8.6.8. provide advice with respect to all regulatory filing and public disclosure relating to the Institute's governance processes;
  - 5.8.6.9. assist with Board Member induction and training programmes;
  - 5.8.6.10. ensure that the Board Charter and the charters of Board committees are reviewed annually or more regularly if required and are kept up to date;
  - 5.8.6.11. prepare and circulate Board and Board committee papers and ensure the preparation and circulation of minutes of Board and committee meetings;
  - 5.8.6.12. elicit responses, input, feedback for Board and Board committee meetings;
  - 5.8.6.13. assist with drafting annual Board and Board committee work plans;
  - 5.8.6.14. assist with the evaluation of the Board, its committees and individual Board Members; and

- 5.8.6.15. ensure compliance with the Constitution, the By-laws and Applicable Laws.

## **6. DELEGATION AND BOARD COMMITTEES**

- 6.1. Without detracting in any way from the general powers of the Board, the Board may from time to time determine, in terms of the governance framework and delegated authorities, which matters:
  - 6.1.1. are reserved for final decision-making by the Board or Board committees; or
  - 6.1.2. require the Board's or Board committees' consent before a final decision is made.
- 6.2. In terms of the Constitution, the Board is empowered to constitute Board and other committees and to delegate powers to such committees.
- 6.3. The Board may delegate its functions without abdicating its own responsibilities.
- 6.4. The Board delegates authority, not expressly reserved for the Board and its committees, to the CEO, who shall be accountable to the Board, subject to the obligation to report all material matters to the Board.
- 6.5. The CEO is entitled to delegate his/her duties, powers and authority to such members of management as is appropriate. Delegating authority does not discharge the CEO of his/her duties and responsibilities.
- 6.6. There shall be transparency and full disclosure by the Board committees to the Board, except where the Board has mandated the committee otherwise.
- 6.7. Delegation is formal and requires:
  - 6.7.1. that formal written charters are established and approved by the Board for each committee of the Board which outline the terms of reference of such committee;
  - 6.7.2. that the committees' charters are reviewed once a year;
  - 6.7.3. that the committees are appropriately constituted with due regard to the skills required by each committee;
  - 6.7.4. a formal documented Delegation of Authority which details the powers and functions delegated by the Board to the CEO and the powers and functions delegated to management by the CEO; and
  - 6.7.5. that the Delegation of Authority is reviewed annually or whenever there is a change to the organisational structure of the Institute.
- 6.8. The Board has the following committees:
  - 6.8.1. Audit and Risk Committee;
  - 6.8.2. Human Resources and Remuneration Committee;
  - 6.8.3. Nomination and Governance Committee;
  - 6.8.4. Social, Ethics and Transformation Committee; and
  - 6.8.5. Digital Transformation Governance Committee.
- 6.9. The Board shall be advised by a Council appointed by appropriate constituents, as described in the Constitution.

## **7. BOARD GOVERNANCE**

- 7.1. The Institute complies with all applicable corporate legislation. It also applies the principles and the majority of the recommended practices of King IVTM to the extent that they advance effective business leadership and governance in the Institute's environment. Where the Institute does not apply the principles, an explanation will be provided in the integrated report. The corporate governance practices are reviewed frequently and changed where appropriate in order to accommodate developments within the corporate governance environment.
- 7.2. Board Members are entitled to have access to all relevant Institute information and documents and to executive and senior management to assist them in the discharge of their duties and responsibilities to enable them to take informed decisions. The Secretary shall facilitate contact with senior management and ensure access to information.
- 7.3. Board Members are required to maintain and protect the confidentiality of information relating to the Institute and its business.
- 7.4. Board Members may seek independent professional advice, subject to prior consultation with the Chairperson or in other appropriate circumstances, the Secretary.
- 7.5. All Board Members are entitled to attend any committee meetings but shall not be entitled to a fee in respect of meetings for committees of which they are not members.

## **8. MEETING PROCEDURES**

### **8.1. Attendance and Participation**

- 8.1.1. Board Members must use their best endeavours to attend all Board meetings. Board Members are expected to be fully prepared for Board meetings in order to be able to participate fully, frankly and constructively in Board discussions and other activities and to bring the benefit of their particular knowledge, skills and abilities to bear in discharging their duties as Board Members.
- 8.1.2. Board Members who are unable to attend Board meetings must convey a prior apology with reasons to the Chairperson or Secretary.
- 8.1.3. The Secretary may in his/her discretion, authorise the use of audio or video conferencing facilities to make participation in a Board meeting possible should attendance in person not be possible.
- 8.1.4. If both the Chairperson and the Lead Independent Board Member are absent from a Board meeting, the Board Members present must elect one of their number to act as chairperson.
- 8.1.5. Executive and senior management who are not Board Members, assurance providers and professional advisors may be in attendance at meetings, but by invitation only and they may not vote.

### **8.2. Frequency of Meetings**

- 8.2.1. The Board must hold sufficient scheduled meetings to discharge all of its duties as set out in this Board Charter but subject to a minimum of 4 (four) meetings per calendar year at intervals of not more than 3 (three) calendar months.

- 8.2.2. Meetings in addition to those scheduled may be held at the instance of: (i) any Board Member; or (ii) the Secretary.

### 8.3. Quorum

- 8.3.1. A majority of Board Members must be present in person or electronically at a meeting to form a quorum.
- 8.3.2. Individuals in attendance at Board meetings by invitation may participate in discussions but do not form part of the quorum for Board meetings.

### 8.4. Agenda and minutes

- 8.4.1. The Board shall cause proper minutes to be kept in separate bound minute books of:
  - 8.4.1.1. all meetings of the Board;
  - 8.4.1.2. all general meetings of members of the Institute; and
  - 8.4.1.3. all meetings of Board committees.
- 8.4.2. The Board must establish an annual work plan to ensure that all relevant matters are covered by the agendas of the meetings planned for the year.
- 8.4.3. A detailed agenda, together with supporting documentation, must be circulated, at least 7 (seven) business days prior to each meeting to the Board Members and other invitees.
- 8.4.4. The minutes must be completed as soon as possible after the conclusion of each meeting and circulated to the Chairperson and the CEO for review thereof. The minutes must be formally approved by the Board at its next scheduled meeting and kept in a bound minute book.

### 8.5. Retention of meeting papers

- 8.5.1. All meeting papers and submissions made at Board meetings are strictly confidential and neither the Board Members nor any other person may circulate them to any other parties. Exceptions to this prohibition must be authorised by the Chairperson or the Secretary, as is appropriate.
- 8.5.2. Board Members are expected to manage their security passwords providing electronic access to their meeting packs with due care and vigilance. A record of Board submissions and of material presented to the Board, shall be maintained and kept by the Secretary together with the minutes of meetings in line with the retention policy. Board Members may arrange with the Secretary to obtain access to records of Board documentation and minutes if required by them in the course of discharging their duties.

### 8.6. Decisions and Round Robin Resolutions

- 8.6.1. Resolutions taken at a meeting of the Board shall be decided by a majority of votes of members attending the meeting either in person or electronically. The Chairperson shall not have a casting vote in addition to his or her deliberative vote.
- 8.6.2. A decisions taken by a round robin resolution in writing signed by a majority of the Board Members shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and constituted, provided where

possible, all Board Members have been given notice of the proposed resolution and have had an opportunity to express their views on the resolution.

- 8.6.3. It is Board policy to limit the use of round robin resolutions to instances where the resolution is a mere formality or where the matter requiring decision is of such an urgent nature that it cannot be deferred until the next Board meeting.
- 8.6.4. The Chairperson, with the assistance of the Secretary, should consider whether an urgent special Board meeting would be a more appropriate decision-making procedure than a round robin resolution.
- 8.6.5. Notice of the matter to be decided by round robin resolution must be delivered to each Board Member where possible.

## **9. DISCLOSURE OF CONFLICT OF INTEREST**

- 9.1. If a Board Member has any interest (including, but not limited to, a financial interest or an interest in respect of a disciplinary matter) which is to be considered at a Board meeting, or knows that a related person has such an interest, that Board Member:
  - 9.1.1. must disclose the general nature of the interest before the matter is considered;
  - 9.1.2. must disclose all material information known to that Board Member to the persons present at the Board meeting;
  - 9.1.3. may disclose observations and insights relating to the matter if requested by the other Board Members to do so;
  - 9.1.4. may not be present when the matter is discussed, and may not participate in the consideration of the matter; and
  - 9.1.5. while absent from the meeting, is to be regarded as being present at the meeting for the purpose of determining whether sufficient Board Members are present to constitute a quorum for the meeting.
- 9.2. A Board Member may disclose any interest as described in paragraph 9.1 in advance by delivering to the Secretary a notice setting out the nature and extent of the interest. The Secretary must submit all disclosures of interest to the Board at the first subsequent meeting.
- 9.3. A Board Member who acquires a direct personal financial interest after an agreement or other matter has been approved by the Institute, must promptly disclose the nature and extent of that interest to the Board.
- 9.4. Failure to disclose an interest will render decisions, transactions or agreements invalid, unless subsequently ratified by the Board Members and if that ratification is not granted, by a court.
- 9.5. Enduring material conflicts of interest are regarded by the Board as incompatible with the fiduciary duties of Board Members. Board Members are appointed on the express understanding and agreement that they may be removed by the Board if and when they develop an actual or prospective material, enduring conflict of interest.

## **10. PERFORMANCE EVALUATION**

- 10.1. A formal evaluation of the Board, its committees and individual Board Members, including the Chairperson, must be performed, either externally facilitated or not, at

least every 2 (two) years. Every alternate year, opportunity is provided for reflection and discussion by the Board of its performance and that of its committees, its Chairperson and its members as a whole.

- 10.2. The Lead Independent Board Member shall ensure that the performance of the Chairperson is evaluated and shall chair those portions of meetings at which the Chairperson's performance appraisal is discussed.

## **11. REMOVAL OF A BOARD MEMBER**

- 11.1. Removal of a Board Member is dealt with in the Constitution under paragraph 6.11 and further detailed in the By-laws under paragraph 5.

## **12. REVIEW OF CHARTER**

- 12.1. This Board Charter shall be reviewed by the Board annually and must be placed on the Institute's website.



## **ANNEXURE A TO THE BOARD CHARTER**

### **1. South African Institute of Chartered Accountants: Preferred Attributes, Knowledge and Skills of Board Members**

#### 1.1. Every Board Member must:

- 1.1.1. subscribe to the highest levels of ethics and integrity;
- 1.1.2. support transformation and nation building and be willing to implement suitable strategies;
- 1.1.3. have a sound understanding of governance and business principles;
- 1.1.4. be a strategic thinker and aware of developments in the country and globally that impact the profession or will impact the profession in the future;
- 1.1.5. be willing to address key issues and solve them. It requires strong leadership, with Board Members not afraid to challenge the status quo and who are prepared to address issues such as the disciplining of errant members;
- 1.1.6. be prepared to take time to understand the business so that they can play a positive and effective role;
- 1.1.7. have an understanding of governance principles, ethics, risk management and internal controls;
- 1.1.8. be able to engage with management and have robust discussions on strategy and performance, and be prepared to have difficult conversations where necessary. (Business experience at a high level);
- 1.1.9. have sufficient knowledge of strategies and operations to provide support to management where needed;
- 1.1.10. understand the importance of communications in all its forms from a reputational risk management perspective; and
- 1.1.11. be able to define and identify key stakeholders at any point in time and engage them as appropriate.

#### 1.2. A balance of the following skills, knowledge and attributes should be considered by the Nominations and Governance Committee when nominating Board Members.

- 1.2.1. The candidate should preferably have an understanding of the core skills and training needs of accountancy and related subjects. It is critical that the Board understands key technical issues so that it can make appropriate strategic decisions relating to resource allocation.
- 1.2.2. The candidate should have an understanding of the future education and training needs of the profession, because changes implemented take 7 (seven) to 10 (ten) years to take effect.
- 1.2.3. The candidate should preferably have some understanding of legal issues.
- 1.2.4. The candidate should have some knowledge of the public sector and government.
- 1.2.5. The candidate should have some knowledge of small and medium business.

- 1.2.6. The candidate should have a strategic understanding of auditing and assurance and how these should be developed in the future to meet the public needs.
  - 1.2.7. The candidate should have an understanding of finance and funding of the Institute and its activities.
  - 1.2.8. The candidate should have an understanding of value creation and the six capitals and the various trade-offs.
  - 1.2.9. The candidate should have an understanding of IT and digitalisation and the risks and opportunities associated with them.
  - 1.2.10. The candidate should have a high-level understanding of a member-based organisation which has a focused mission.
- 1.3. Individuals not eligible for consideration by the Nominations and Governance Committee are listed in the By-laws under paragraph 5.1 thereof.

## **APPENDIX 2: COUNCIL CHARTER**

### **1. INTRODUCTION**

- 1.1. The Council is established in terms of paragraph 8 of the Constitution.
- 1.2. The Council Charter contained in this **Appendix 2** is not intended to replace or amend the Constitution or and part of the By-laws in any way whatsoever. In the event of a conflict between the Constitution and the By-laws, the Constitution shall prevail.
- 1.3. Words and phrases defined in the Constitution and the By-laws will have the same meaning for purposes of this Council Charter, unless the context indicates otherwise.

### **2. PURPOSE OF THE CHARTER**

- 2.1. The purpose of this Council Charter is to set out the composition, function and mandate of the Council.

### **3. COMPOSITION**

- 3.1. The Council composition shall be representative of constituencies and shall consist of not more than 40 (forty) individuals, appointed as follows:
  - 3.1.1.2 (two) members shall be appointed from time to time by the Council of the Central Region;
  - 3.1.2.2 (two) members shall be appointed from time to time by the Council of the Eastern Region;
  - 3.1.3.2 (two) members shall be appointed from time to time by the Council of the Northern Region;
  - 3.1.4.2 (two) members shall be appointed from time to time by the Council of the Southern Region;
  - 3.1.5.2 (two) members shall be appointed from time to time by The Association for the Advancement of Black Accountants of Southern Africa (ABASA);
  - 3.1.6.1 (one) member shall be appointed from time to time by the African Woman Chartered Accountants (AWCA);
  - 3.1.7.2 (two) members shall be appointed from time to time by the Members in Business Interest Group;
  - 3.1.8.2 (two) members shall be appointed from time to time by the CFO forum who are CA(SA)s;
  - 3.1.9.2 (two) members shall be appointed from time to time by the Large Practices Interest Group;
  - 3.1.10. 2 (two) members shall be appointed from time to time by the Small and Medium Practices Interest Group;
  - 3.1.11. 1 (one) member shall be appointed by the International Members Executive Committee from time to time as a representative of international members;
  - 3.1.12. 1 (one) member shall be appointed by an appropriate academic forum from time to time as a representative of academics;

- 3.1.13. 1 (one) member shall be appointed from time to time by the Public Sector Committee as a representative of the public sector;
  - 3.1.14. 2 (two) members shall be appointed by associate colleges from time to time representing associates, and consisting of at least one AGA(SA);
  - 3.1.15. a maximum of 5 (five) members may be co-opted to the Council;
  - 3.1.16. the CEO shall be an ex officio member; and
  - 3.1.17. 1 (one) other member of management appointed by the Board on the recommendation of the CEO shall be an ex officio member of the Council.
- 3.2. A casual vacancy occurring in the membership of the Council shall be filled by a person appointed by the constituency concerned.
  - 3.3. The eligibility for appointment, and the termination of appointment respectively, of members of the Council are dealt with in paragraph 5 of the By-laws.
  - 3.4. The Council should strive to reflect the race, gender and disability demographics of the country.
  - 3.5. The composition will be amended from time to time to ensure representation of constituencies subject to the entrenched rights
  - 3.6. The Council may, at any time, invite any person as a non-voting observer, whenever it deems such invitation necessary or appropriate.
  - 3.7. The Board shall have the right to suspend or remove any member of the Council whenever it deems it appropriate to do so, or to require a member to recuse himself or herself from proceedings of the Council.
  - 3.8. A member of the Council shall at all times act in the interests of the Institute as a whole and not as a delegate of the constituency which appointed him or her.

#### **4. FUNCTION AND MANDATE OF THE COUNCIL**

- 4.1. The function and mandate of the Council is as follows:
  - 4.1.1. to serve as a consultative forum to consider and provide input to the Board on matters relating to the long-term strategy of the Institute and the profession;
  - 4.1.2. to represent Members' and Associates' interests facilitated through input from the Regional Councils and other relevant sources and communicated by the Council to the Board and management;
  - 4.1.3. to identify new Interest Groups and recommend these to the Board for representation on the Council;
  - 4.1.4. to provide input to the Nomination and Governance Committee for the appointment of members to the Board;
  - 4.1.5. to consider and advise the Board on the award of honorary life membership to Members;
  - 4.1.6. to recommend changes to the Code of Professional Conduct for approval by the Board; and
  - 4.1.7. to temporarily assume the powers and functions of the Board if the majority of the members of the Board resign or are removed and are not replaced in

accordance with the provisions of the Constitution and the By-laws until such time as a new Board can be appointed.

- 4.2. The Council shall not interfere with the agenda or activities of the Board, unless the Board operates or threatens to operate outside of its mandate as set out in the Constitution, in which case the concerns of the Council must be brought to the attention of the membership at a General Meeting called in terms of the Constitution.

## **5. TERM OF OFFICE**

- 5.1. Members of the Council shall hold office for a period of 3 (three) years, which may be renewed for a further 3 (three) year period.

## **6. PRESIDENT**

- 6.1. The Council shall elect from among its members a President.
- 6.2. The President elected in terms of paragraph 6.1 shall act as Chairperson of the Council and shall serve a 1 (one) year term of office reviewed annually, up to a maximum of 6 (six) years in the aggregate.
- 6.3. In the event of the President being unable to attend a meeting, an Acting Chairperson shall be elected from those nominated members (not ex officio) present at the Council meeting.
- 6.4. The President or his/her nominee shall be an ex officio non-independent member of the Board.

## **7. MEETINGS AND MINUTES**

- 7.1. The Council shall meet at least twice a year.
- 7.2. The Council shall cause proper minutes to be kept in separate bound minute books of all meetings of the Council and shall be made available to the Board.
- 7.3. The Chairperson must call additional meetings upon a reasonable request of any member of the Council, including ex officio members.
- 7.4. A quorum shall comprise at least 50% (fifty percent) plus 1 (one) member, 1 (one) of whom shall be the CEO or his/her delegated alternate.
- 7.5. Decisions shall be taken by an ordinary majority of members of the Council.

## **8. DISSOLUTION OF THE COUNCIL**

- 8.1. The Council may be dissolved by a decision of the majority of the members of the Council.

## **9. REVIEW OF CHARTER**

- 9.1. This Council Charter shall be reviewed by the Board annually and must be placed on the Institute's website.

## **APPENDIX 3: REGIONS AND INTEREST GROUPS**

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### **1. Regions**

- 1.1. For the purposes of the Constitution and By-laws, the Board has determined the following Regions:
- 1.2. Central Region consisting of the Free State, North-West and Northern Cape provinces;
- 1.3. Eastern Region consisting of the Kwazulu Natal province;
- 1.4. Northern Region consisting of the Gauteng, Mpumalanga and Limpopo provinces;
- 1.5. Southern Region consisting of the Eastern and Western Cape provinces; and
- 1.6. International Region consisting of Northern America, European and Australasian regions.

### **2. Interest Groups**

- 2.1. For the purposes of the Constitution and the By-laws, the Board has determined the following interest groups / committees:
- 2.2. The Association for the Advancement of Black Accountants of Southern Africa, more commonly referred to as ABASA;
- 2.3. African Women Chartered Accountants, more commonly referred to as AWCA;
- 2.4. Members in Business Interest group;
- 2.5. The Large Practices Interest group;
- 2.6. The Small and Medium Practices Interest Group;
- 2.7. CFO Forum; and
- 2.8. Public Sector Committee.

## APPENDIX 4: DISCIPLINARY CODE AND PROCEDURES

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**Application: Attention is drawn to the transitional provisions in paragraph 19 below.**

**1. The Disciplinary Code and Procedures forms part of the By-laws and must be read in conjunction therewith. In the case of conflict between the Disciplinary Code and Procedures and the By-laws, the By-laws shall prevail.**

### **2. DEFINITIONS**

2.1. Words in the Disciplinary Code and Procedures shall have the meaning as defined in the By-laws and the Constitution.

2.2. In addition thereto, the following definitions shall apply to the Disciplinary Code and Procedures:

2.2.1. “**Ad hoc additional panellists**” are such additional panellists co-opted to the DC or the PCC by virtue of their expertise. These ad hoc additional panellists, whether members of the Institute or otherwise, shall only be appointed for the hearing or consideration of a particular disciplinary matter in terms of the Code on a case by case basis, but this shall not preclude any such panellist from being co-opted in any future disciplinary matters.

2.2.2. “**Advisory matters**” are those matters in which the office of the Designated Disciplinary Officer is obliged in terms of the Code to consult with the PCC prior to making a determination.

2.2.3. The “**Code**” is the Disciplinary Code and Procedures as contained in this Appendix 4.

2.2.4. The “**Code of Professional Conduct**” is the Code of Professional Conduct of the South African Institute of Chartered Accountants as amended by the Institute from time to time and which is applicable to Members, Associates and Trainee Accountants.

2.2.5. “**Committee**” shall mean the PCC or the DC, as constituted from the Disciplinary Panel, as the case may be.

2.2.6. A “**Complainant**” is any person, whether natural or juristic (including the Institute itself), who lodges a Complaint with the Institute as envisaged in the Code. In the case of a report in the media which is brought to the attention of the Designated Disciplinary Officer, she/he will deal with the matter as prescribed in paragraph 10 and the media report will constitute the basis for the Complaint.

2.2.7. A “**Complaint**” shall be any written report lodged with the office of the Designated Disciplinary Officer, or any report in the media which is brought to the attention of the office of the Designated Disciplinary Officer, alleging conduct of a Respondent, which may amount to misconduct and hence amounts to Punishable Conduct. Unless the Designated Disciplinary Officer determines otherwise, and save in the instances of media reports, all Complaints shall be on affidavit.

- 2.2.8. The “**Complaints Register**” is a register (which may be in electronic format) kept by the office of the Designated Disciplinary Officer in which recordal shall be made of all Complaints in chronological order of receipt, subsequent findings and sanctions imposed.
- 2.2.9. “**CPD**” is Continuing Professional Development, which inter alia, includes the maintenance of professional competence which requires a continuing awareness and an understanding of relevant technical, professional and business developments. CPD enables a Member and/or Associate to develop and maintain the capabilities to perform competently within the professional environment as required by the Institute (as a Member and/or Associate) and/or by a Regulator (as a Tax Practitioner/ Business Rescue Practitioner).
- 2.2.10. “**CPD Requirements**” are such requirements as are imposed on Members and/or Associates in respect of CPD obligations in terms of the Code of Professional Conduct.
- 2.2.11. “**Costs**” shall be all actual costs reasonably incurred by the Institute in the investigation and hearing of a Complaint by a DC and matters which are opposed before the PCC and shall include, but not be limited to:
- 2.2.11.1. the professional fees and costs of any member of a DC;
  - 2.2.11.2. the reasonable professional fees of any Legal Practitioner appointed as evidence leader in any disciplinary hearing;
  - 2.2.11.3. the costs of the venue to hold the disciplinary hearing;
  - 2.2.11.4. the costs of recording and transcription of the disciplinary hearing;
  - 2.2.11.5. the costs of copying of all documents relevant to the proceedings;
  - 2.2.11.6. the costs of any expert witnesses on behalf of the Institute whose evidence is used in a disciplinary hearing;
  - 2.2.11.7. the reasonable travel and subsistence costs of non-expert witnesses whose evidence is used in a disciplinary hearing on behalf of the Institute; and/or
  - 2.2.11.8. any other reasonable expenses incurred by the Institute.
- 2.2.12. “**Day**” is a calendar day.
- 2.2.13. A “**Debt to the Institute**” shall mean the indebtedness of a Member to the Institute for the amount certified in a certificate of indebtedness signed by the Secretary arising from the imposition of a Fine and/or Costs or a settlement arrangement reached between the Institute and a Respondent arising from a Complaint and shall constitute prima facie proof of its contents.
- 2.2.14. The “**Designated Disciplinary Officer**” means the Project Director: Legal and Discipline of the Institute, or any person designated to act in that capacity by the CEO. The Designated Disciplinary Officer shall at all times act independently, execute the prescribed responsibilities, consult with the PCC as set out in the Code, and shall report to the Board on:
- 2.2.14.1. The adequacy of resources for investigative and disciplinary processes;
  - 2.2.14.2. Membership of the disciplinary panel from which the PCC and DC are constituted;



- 2.2.14.3. Compliance with the approved disciplinary process by PCCs and DCs; and
- 2.2.14.4. The adequacy of the approved disciplinary process and the extent to which it meets the expectations of the profession and its stakeholders and ways in which to improve the disciplinary process.
- 2.2.15. A **“Fine”**
- 2.2.15.1. May be a monetary penalty imposed against a Respondent arising from the outcome of a Disciplinary Hearing or a finding and sanction by the DC or PCC (The PCC may impose a fine of not more than half the maximum amount that the DC may impose in terms of the provisions of these By-law) ; or
- 2.2.15.2. May be imposed by the Designated Disciplinary Officer in instances where a Respondent has admitted to Punishable Conduct as provided for in matters within the ambit of Schedule 1A; 2A; 3A; 1B; 2B or 3B.
- 2.2.16. A **“Legal Practitioner”** is an advocate or attorney admitted and enrolled as such in terms of section 24 or 30 of the Legal Practice Act, 28 of 2014, respectively.
- 2.2.17. **“panellists”** shall mean a Member, as defined in 7.1.1.1, or Lawyer, as defined in 7.1.1.2, duly appointed to serve on the Disciplinary Panel.
- 2.2.18. **“PCC Sanctions”** shall mean Fines as set out in the Schedules as well as cautions, reprimands and/or suspension from Membership, Associateship or Traineeship and/or cancellation of Training Contract.
- 2.2.19. **“prima facie case”** means a case in which the evidence produced in respect of the conduct of a Respondent is sufficient to enable a decision that the Respondent is guilty of Punishable Conduct.
- 2.2.20. **“prima facie evidence”** means evidence which justifies the investigation of a Complaint.
- 2.2.21. **“Punishable Conduct”** means conduct referred to in paragraph 4, 5 or 6 of the Code and further read with Schedules.
- 2.2.22. **“Respondent”** shall mean a Member, former Member, Associate, former Associate, Trainee Accountant or former Trainee Accountant , as the case may be, against whom a Complaint has been lodged with the office of the Designated Disciplinary Officer or who is the Respondent in an enquiry by the PCC.
- 2.2.23. **“Schedules”** shall mean the Schedules 1A, 1B, 2A, 2B, 3A and 3B annexed to the Code
- 2.2.24. **“The office of the Designated Disciplinary Officer”** refers to the officers and employees appointed as such by the Institute, who shall fulfil the functions of the Designated Disciplinary Officer and his or her support staff of the disciplinary function

### 3. JURISDICTION

- 3.1. A person who, committed a form of misconduct and/or Punishable Conduct whilst he or she was a Member, Associate or Trainee Accountant, shall continue to be subject to the Code after they have ceased to be a Member, Associate, or Trainee Accountant, as the case may be, as if they had not so ceased; and references in this Code to a Member, Associate, or Trainee Accountant shall be construed accordingly so far as may be necessary to give effect to this paragraph.

#### **4. PUNISHABLE CONDUCT APPLICABLE TO CHARTERED ACCOUNTANTS**

- 4.1. The following offences whether of commission or of omission, upon the part of any person who is or was a Chartered Accountant at the time of the commission of the alleged offence shall constitute Punishable Conduct and such Member or former Member admitting to his/her guilt or found guilty thereof as provided in the Code shall be liable to the penalties prescribed in the Code:
  - 4.1.1. contravening any of the provisions of the Chartered Accountant's (Private) Designation Act, 67 of 1993 ("the Designation Act");
  - 4.1.2. 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;
  - 4.1.3. 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;
  - 4.1.4. improperly obtaining or attempting to obtain work;
  - 4.1.5. 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;
  - 4.1.6. unlawfully failing to account for, or unreasonably delaying an accounting for, any money or property received for or on behalf of a client or any other person when called upon to do so;
  - 4.1.7. failing to comply with any regulation, By-law or Code of Professional Conduct;
  - 4.1.8. 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;
  - 4.1.9. directly or indirectly stipulating for 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;

- 4.1.10. without reasonable cause failing to resign from a professional appointment when requested by the client to do so; and/or
  - 4.1.11. failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute.
- 4.2. The following misconduct whether of commission or of omission, upon the part of any person who is or was a Chartered Accountant at the time of the commission of the alleged misconduct shall constitute Punishable Conduct and such Member or former Member admitting to his/her guilt or found guilty thereof as provided in the Code shall be liable to the penalties prescribed in the Code:
- 4.2.1. contravening any of the provisions of sections 44, 52, 53 or 54 of the Auditing Profession Act, 26 of 2005 ("APA"), 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 10 of the APA, 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 37 of the APA by fraudulent or irregular means;
  - 4.2.2. 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 (without limitation) work or employment in connection with secretaryships, trusteeships, liquidations, judicial managements, business rescue, executorships, administratorships or curatorship's, or any office of trust which he or she has undertaken or accepted;
  - 4.2.3. certifying or reporting on any accounts, statements, reports or other documents, without taking reasonable steps to ensure the correctness of such certificate or report;
  - 4.2.4. 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 perform or with which it is his or her duty to conform;
  - 4.2.5. committing a breach of any rule or any provision of the Code of Professional Conduct prescribed by the Board from time to time in terms of By-law 20 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;
  - 4.2.6. conducting himself or herself in a manner which, in the opinion of the PCC or the DC, is discreditable, dishonourable, dishonest, irregular or unworthy, or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute;
  - 4.2.7. failing to answer or deal with appropriately within a reasonable time any correspondence or other communication from the Institute or any other person which reasonably requires a reply or other response;
  - 4.2.8. failing to comply within a reasonable time with an order, requirement or request from the Institute; and/or

- 4.2.9. failing to notify SAICA of his/her provisional sequestration or final sequestration.
- 4.3. Punishable Conduct on the part of a Trainee Accountant shall include any conduct which would amount to Punishable Conduct had it been perpetrated by a Member, Associate General Accountant or Accounting Technician.

## **5. PUNISHABLE CONDUCT APPLICABLE TO THE COLLEGE OF GENERAL ACCOUNTANTS**

- 5.1. The following offences whether of commission or of omission, upon the part of any person who is or was an Associate at the time of the commission of the alleged offence shall constitute Punishable Conduct and such Associate or former Associate admitting to his/her guilt or found guilty thereof as provided in the Code shall be liable to the penalties prescribed in the Code:
  - 5.1.1. contravening any of the provisions of the Designation Act;
  - 5.1.2. directly or indirectly paying a person, other than a Member or Associate in public practice, or any person practicing 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;
  - 5.1.3. 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;
  - 5.1.4. improperly obtaining or attempting to obtain work;
  - 5.1.5. 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;
  - 5.1.6. 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 perform or with which it is his or her duty to conform;
  - 5.1.7. unlawfully failing to account for, or unreasonably delaying an accounting for, any money or property received for or on behalf of a client or any other person when called upon to do so;
  - 5.1.8. 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;
  - 5.1.9. 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;

- 5.1.10. without reasonable cause failing to resign from a professional appointment when requested by the client to do so;
  - 5.1.11. failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute; and/or
  - 5.1.12. Punishable 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.
- 5.2. The following misconduct whether of commission or of omission, upon the part of any person who is or was an Associate at the time of the commission of the alleged offence shall constitute Punishable Conduct and such Associate or former Associate admitting to his/her guilt or found guilty thereof as provided in the Code shall be liable to the penalties prescribed in the Code:
- 5.2.1. 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, business rescue, executorships, administratorships or curatorships, or any office of trust which he or she has undertaken or accepted;
  - 5.2.2. committing a breach of any rule or any provision of the Code of Professional Conduct 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;
  - 5.2.3. conducting himself or herself in a manner which, in the opinion of the PCC or the DC, is discreditable, dishonourable, dishonest, irregular or unworthy, or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute;
  - 5.2.4. 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;
  - 5.2.5. failing to comply within a reasonable time with an order, requirement, or request from the Institute; and/or
  - 5.2.6. failing to notify SAICA of his/her provisional sequestration or final sequestration.

## 6. PUNISHABLE CONDUCT APPLICABLE TO ACCOUNTING TECHNICIANS

- 6.1. The following offences whether of commission or of omission, upon the part of any person who is or was an **Accounting Technician** at the time of the commission of the alleged offence shall constitute Punishable Conduct and such Accounting Technician or former Accounting Technician admitting to his/her guilt or found guilty thereof as provided in the Code shall be liable to the penalties prescribed in the Code:
- 6.1.1. contravening any of the provisions of the Designation Act;
  - 6.1.2. 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 Associate work, or for inducing other persons to give work to the Associate;

- 6.1.3. 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;
  - 6.1.4. improperly obtaining or attempting to obtain work;
  - 6.1.5. 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;
  - 6.1.6. 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 perform or with which it is his or her duty to conform;
  - 6.1.7. unlawfully failing to account for, or unreasonably delaying an accounting for, any money or property received for or on behalf of a client or any other person when called upon to do so;
  - 6.1.8. failing to comply with any regulation, By-law or Code of Professional Conduct;
  - 6.1.9. without reasonable cause failing to resign from a professional appointment when requested by the client to do so;
  - 6.1.10. failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute; and/or
  - 6.1.11. Improper Conduct on the part of an Accounting Technician shall include any conduct which would be improper had it been perpetrated by a Member or other Associate.
- 6.2. The following misconduct whether of commission or of omission, upon the part of any person who is or was an Accounting Technician at the time of the commission of the alleged offence shall constitute Punishable Conduct and such Accounting Technician or former Accounting Technician admitting to his/her guilt or found guilty thereof as provided in the Code shall be liable to the penalties prescribed in the Code:
- 6.2.1. 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 trusteeships and executorships or any office of trust which he or she has undertaken or accepted;
  - 6.2.2. committing a breach of any rule or provision of the Code of Professional Conduct 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;
  - 6.2.3. conducting himself or herself in a manner which, in the opinion of the PCC or the DC, is discreditable, dishonourable, dishonest, irregular or unworthy, or which is derogatory to the Institute, or tends to bring the profession of accountancy into disrepute;
  - 6.2.4. 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;

- 6.2.5. failing to comply within a reasonable time with an order, requirement or request from the Institute; and/or
- 6.2.6. failing to notify SAICA of his/her provisional sequestration or final sequestration.

## **7. THE DISCIPLINARY PANEL: PCC AND DC**

### **7.1. There shall be:**

#### **7.1.1. A Disciplinary Panel, which shall consist of the following panelists:**

- 7.1.1.1. Members, in Good Standing for at least five years; and
- 7.1.1.2. Lawyers, being retired magistrates, judges or practising Legal Practitioners of not less than 10 (ten) years' experience, who shall act as the Chairperson of the applicable Committee when so called upon

who shall be appointed by the Board on recommendation of the CEO for an initial period of 3 (three) years where after their appointment shall be renewable for further periods of 3 (three) years duration per renewal on recommendation of the Designated Disciplinary Officer.

#### **7.1.2. PCCs, as and when required, which shall be appointed by the office of the Designated Disciplinary Officer from the panellists of the Disciplinary Panel who have declared that they have no conflict of interest in the matter at hand and must consist of:**

- 7.1.2.1. in the case of advisory matters 2 (two) panellists, with a quorum being 2 panellists , as referred to in paragraph 7.1.1 above;
- 7.1.2.2. in any other matters 2 (two) Members and a Lawyer, as referred to in paragraph 7.1.1.2 above and the quorum for the meeting of the PCC shall be 2 (two) panellists, of whom 1 (one) shall be a Lawyer; and
- 7.1.2.3. ad hoc additional panellists whenever the PCC, as constituted, deems such additional appointments necessary.

#### **7.1.3. DCs, as and when required, which shall be appointed by the Designated Disciplinary Officer from the panellists of the Disciplinary Panel who have declared that they have no conflict of interest in the matter at hand and consists of:**

- 7.1.3.1. 3 (three) such panellists, one of whom shall be a Lawyer and the quorum for a meeting of the DC shall be 2 (two) panellists which shall consist of 1 (one) Member and 1 (one) Lawyer, as referred to in paragraph 7.1.1.2 above; and
- 7.1.3.2. co-opted ad hoc additional panellists whenever the DC, as constituted, deems such additional appointment necessary.

### **7.2. The appointment of panellists to the Committees shall be determined by the Designated Disciplinary Officer, as assisted by the office of the Designated Disciplinary Officer. If for any reason a panellist of the DC or PCC, becomes unavailable after the commencement of a hearing, the hearing shall continue with the remaining panellists provided that the Committee is still quorate.**

### **7.3. In discharging their functions under this Code, the Committees mentioned in this paragraph 7 may have regard to all relevant matters, including any code of practice (whether relating to the ethical, the technical or any other aspect of practice), and any**

regulations or guidance, applicable (as the case may be) to the Respondent concerned.

## **8. COMPLAINT RECEIPT AND INITIAL ASSESSMENT**

8.1. All Complaints shall immediately be brought to the attention of the Designated Disciplinary Officer who shall deal therewith as follows:

8.1.1. **STEP 1:** On receipt of a Complaint the office of the Designated Disciplinary Officer shall, as soon as reasonable possible, enter the Complaint in the Complaints Register and when the complaint emanates from a media report, deal with same in terms of paragraph 11;

8.1.2. **STEP 2:** Forthwith ascertain whether the Complaint is against a Member, Associate or Trainee Accountant; if a Member, whether the Member is a concurrent member of the IRBA, and if the Complaint is in respect of an audit related matter.

8.1.3. **STEP 3:** The office of the Designated Disciplinary Officer shall acknowledge receipt of the Complaint (other than one emanating from a media report) in writing and shall inform the Complainant whether the Complaint is against a Member, Associate or Trainee Accountant or a concurrent Member of the IRBA, whether the complaint is in respect of an audit related matter and if so whether the Complaint will be dealt with by the Institute or referred to the IRBA, as applicable:

8.1.3.1. If the Respondent is a concurrent member of the IRBA, and the Designated Disciplinary Officer is of the opinion that the complaint is in respect of an audit related matter, the office of the Designated Disciplinary Officer shall refer the Complaint to the IRBA; or

8.1.3.2. If, in the case of a concurrent member, where the complaint is in respect of a non-audit related matter; alternatively where the IRBA fails and/or decides not to prosecute a Complaint referred to it and indicates to the Institute its intention not to proceed with disciplinary action against the Respondent, then the office of the Designated Disciplinary Officer shall deal with the Complaint according to the procedure as if the Respondent is not a concurrent member of the IRBA as set out in paragraph 8.1.4 of the Code;

8.1.4. **STEP 4:** If the Respondent is a Member of the Institute and not a concurrent member of the IRBA, or is an Associate or Trainee Accountant, the office of the Designated Disciplinary Officer shall deal with the Complaint as follows:

8.1.4.1. If, having considered the Complaint, the office of the Designated Disciplinary Officer is of the opinion that the Complaint contains prima facie evidence against the Respondent, the office of the Designated Disciplinary Officer must simultaneously determine whether the nature of the alleged conduct falls within offences set out in Schedules of the Code as provided for in paragraph 9 or outside of them as provided for in paragraph 10; or

8.1.4.2. If the office of the Designated Disciplinary Officer, having considered the Complaint, is of the view that the Complaint does not amount to prima facie evidence against the Respondent, he or she must treat the



matter as an Advisory matter and the PCC must consider if the Complaint amounts to prima facie evidence as provided in paragraph 12.1.1. The Complainant shall forthwith be informed of the PCC view and the office of the Designated Disciplinary Officer shall make a recordal thereof in the Complaints Register and if the decision is that there is prima facie evidence, continue to deal with same accordingly;

8.1.5. Notwithstanding the above, the Designated Disciplinary Officer may, at any time, reopen a matter which has been previously closed following assessment where he or she has reason to believe that:

8.1.5.1. the decision not to proceed with the matter may have been materially flawed (for any reason); or

8.1.5.2. there is new information which may lead, wholly or partly, to a different decision; or

8.1.5.3. the Respondent may have previously withheld information; or

8.1.5.4. the Respondent may have previously misled the office of the Designated Disciplinary Officer,

he or she shall deal with the matter in accordance with paragraph 8.1.4.

## **9. OFFENCES WITHIN THE AMBIT OF SCHEDULE**

9.1. Where the office of the Designated Disciplinary Officer has made a determination in terms of paragraph 8.1.4.1 that the Complaint relates to conduct that falls within the ambit of a first or second offence in terms of Schedule 1A, 2A, 3A, or a first offence in terms of Schedule 1B, 2B or 3B of the Code, the office of the Designated Disciplinary Officer must as soon as reasonable possible notify the Respondent in writing:

9.1.1. of the nature of the Complaint;

9.1.2. of the determination that the Complaint constitutes a prima facie evidence against the Respondent that falls within in the ambit of Schedule 1A, 2A, 3A, 1B, 2B or 3B of the Code;

9.1.3. the applicable sanction as contemplated in the relevant Schedule on acknowledgement of misconduct by the Respondent;

9.1.4. to respond to the office of the Designated Disciplinary Officer regarding both the merits of the Complaint and the applicable sanction within the time period referred to in paragraph 9.2 below. The Respondent's response shall indicate whether he or she admits the facts set out in the Complaint or any portion thereof, and whether the Respondent admits that he or she is guilty of Punishable Conduct in the respects alleged or any part thereof;

9.1.5. that any response from the Respondent will be taken into account to determine the Respondent's misconduct and may be used in evidence against him or her;

9.1.6. of the consequences of acknowledgement of misconduct;

9.1.7. that the Respondent may pay an admission of guilt Fine; and

9.1.8. that if he or she fails to respond to the Complaint within the stipulated time, the office of the Designated Disciplinary Officer may, without inviting further representations, make a finding in the absence of the Respondent's representations and impose a Fine, subject to the advice of a PCC.

- 9.2. The notification must set out, in sufficient detail, the nature of the Complaint so as to enable the Respondent within 21 (twenty-one) days (or such extended period granted by the Designated Disciplinary Officer in his or her sole discretion) to adequately respond thereto.
- 9.3. If the Respondent fails to respond to the notification in terms of paragraph 9.1 within the stipulated or extended time (as applicable), the Respondent will be regarded as having pleaded guilty whereupon the Designated Disciplinary Officer must make a finding regarding the appropriate Fine, subject to advice from the PCC. The office of the Designated Disciplinary Officer must forthwith notify the Respondent of the imposition of the Fine and if applicable, that it is payable within 30 (thirty) days from date of such notification.
- 9.4. In the event that the Designated Disciplinary Officer has imposed a Fine for an offence in terms of Schedules against a Respondent where the Respondent has failed to respond to the invitation to make representations, the Respondent may on good cause shown, make application to the PCC to have the determination and/or the Fine reviewed or set aside.
- 9.5. If the Respondent responds to the notification in terms of paragraph 9.1 within the stipulated or extended time (as applicable) and denies liability for the offence or disputes the proposed Fine, the office of the Designated Disciplinary Officer must refer the matter to the PCC and notify the Respondent that the matter is being referred to a PCC and the time and place for a hearing of the matter.
- 9.6. In any such hearing:
  - 9.6.1. The Respondent is not permitted a representative but may appear in person or may utilise his or her previous written submissions, for consideration by the PCC;
  - 9.6.2. If the Respondent does not attend and makes no written submission, the PCC may consider the Complaint in the Respondent's absence;
  - 9.6.3. Once the PCC has considered the matter and made its findings, including the imposition of a PCC Sanction, the office of the Designated Disciplinary Officer must:
    - 9.6.3.1. forthwith notify the Respondent of the finding and sanction, if applicable, and that, if a Fine is imposed, that it is payable within 30 (thirty) days from date of such notification; and
    - 9.6.3.2. forthwith enter this in the Complaints Register.
- 9.7. In determining the appropriate sanction, the Designated Disciplinary Officer and the PCC must have regard to the following factors:
  - 9.7.1. Whether the Respondent has previously been found guilty of Punishable Conduct, and if so, the nature thereof;
  - 9.7.2. The experience of the Respondent and the period of time the Respondent has been a Member, Associate or Trainee Accountant of the Institute; and
  - 9.7.3. Any other factor which the Designated Disciplinary Officer and the PCC consider to be relevant in the determination of the sanction and record such reasons for the determination.
- 9.8. Where the office of the Designated Disciplinary Officer has recommended the imposition of a Fine in terms of Schedule the PCC may, in its discretion, authorise

that any portion of the Fine to be imposed may be suspended and in such a case must stipulate the amount of the Fine to be suspended and any other conditions of the suspension.

9.9. A Fine is payable to the Institute within 30 (thirty) days of the date on which the Respondent is notified of the Fine, or within such other period stipulated by the office of the Designated Disciplinary Officer or Committee imposing the Fine.

9.10. The findings of the PCC are final.

9.11. Furthermore, the PCC may refer a Complaint against the Respondent to the DC where the PCC is of the view that the Punishable Conduct falls outside the ambit of Schedule 1A, 2A, 3A, 1B, 2B or 3B.; provided that where the PCC 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.

## **10. PUNISHABLE CONDUCT OUTSIDE THE AMBIT OF SCHEDULE**

10.1. If the office of the Designated Disciplinary Officer makes a determination as envisaged in paragraph 8.1.4.1 that the Complaint contains *prima facie* evidence of Punishable Conduct that falls outside of the ambit of Schedules of the Code, or if the PCC refers the Complaint to the DC in terms of 9.11, the Designated Disciplinary Officer must as soon as reasonable possible notify the Respondent in writing:

10.1.1. of the nature of the Complaint;

10.1.2. of the determination that the Complaint constitutes a *prima facie* case falling outside the ambit of Schedules against the Respondent and that the matter will be referred to the DC;

10.1.3. to respond to the office of the Designated Disciplinary Officer regarding the merits of the Complaint within 21 (twenty-one) days or such extended period the Designated Disciplinary Officer may grant. The Respondent's response shall indicate whether he or she admits the facts set out in the Complaint or any portion thereof, and whether the Respondent admits that he or she is guilty of Punishable Conduct in the respects alleged or any part thereof;

10.1.4. that any response from the Respondent will be taken into account to determine the Respondent's misconduct and may be used in evidence against him or her;

10.1.5. of the consequences of acknowledgement of misconduct and of the potential Costs payable in the event of opposed disciplinary hearings; and

that, if the Respondent fails to respond to the Complaint within the stipulated time, the DC may, without inviting further representations, make a finding regarding the Complaint against the Respondent in the absence of representations by the Respondent.

10.2. In the event that the DC has imposed a sanction against a Respondent, where the Respondent has failed to respond, the Respondent may on good cause shown, make application to the DC to have the determination and/or the Sanction reviewed or set aside.

- 10.3. Upon the expiry of the period granted for a response, the Designated Disciplinary Officer shall refer the Complaint to the DC to be dealt with in terms of paragraph 0.

## **11. COMPLAINTS ARISING FROM MEDIA REPORTS**

11.1. In addition to any powers the Designated Disciplinary Officer has and any obligation a Member has in respect of Complaints in terms of the Code, all media reports that make allegations of any misconduct by a Member, Associate, Trainee Accountant or a concurrent member of the IRBA, shall as soon as is reasonably possible, be brought to the attention of the Designated Disciplinary Officer who shall deal therewith as follows:

11.1.1. **STEP 1:** On receipt of such a report, the office of the Designated Disciplinary Officer shall, as soon as is reasonably possible, ascertain whether the media report implicates a Member, Associate or Trainee Accountant and if so, whether the Member is a concurrent member of the IRBA;

11.1.2. **STEP 2:** The office of the Designated Disciplinary Officer shall as soon as is reasonably possible notify the Member, Associate or Trainee Accountant in writing to the e-mail address provided as set out in By-law 17.1:

11.1.2.1. of the contents of the media report;

11.1.2.2. that the Respondent is called upon to respond regarding the allegations made in the media report for purposes of the Institute considering an appropriate response by the Institute to the media report, if at all;

11.1.2.3. that any response by such Member, Associate or Trainee Accountant will be taken into account if any statement in terms of paragraph 17 is made and to determine the Respondent's misconduct and may be used in evidence against him or her; and

11.1.2.4. that if the Respondent fails to respond to the invitation in 11.1.2 within 48 (forty-eight) hours, the CEO may make a statement in terms of paragraph 17 and will be entitled to state that no response from the Respondent was forthcoming;

11.1.3. After receipt of a response as provided for in paragraph 11.1.2 or if no response is received within the stipulated time, the office of the Designated Disciplinary Officer shall deal with matter as a Complaint and *mutatis mutandis* follow the same procedures prescribed herein in respect of Complaints.

## **12. POWERS AND DUTIES OF A PCC**

12.1. A 2 (two) panellist PCC hearing has jurisdiction with regard to the following Advisory Committee matters:

12.1.1. To advise on any Complaint which is brought to its attention by the office of the Designated Disciplinary Officer including but not limited to matters where in the opinion of the office of the Designated Disciplinary Officer there is not prima facie evidence which indicates that a Respondent may have committed a Punishable Offence under these By-laws and dismiss such matters where applicable;

12.1.2. To act in an advisory capacity to the office of the Designated Disciplinary Officer who may at any time in the consideration, investigation, determination of any

Complaint or Sanction to be imposed in connection therewith consult with the PCC regarding the handling of the Complaint;

- 12.1.3. To dismiss/closed on any Complaint which is brought to its attention by the office of the Designated Disciplinary Officer, the subject matter of which is being adjudicated/ litigated / mediated by a court; tribunal; commission, professional body or such other forum competent to determine the Complaint, on condition that the matter maybe be resubmitted to the office of the Designated Disciplinary Officer in terms of paragraph 8 when the matter has been finalised and or completed in any of the abovesaid forums;
  - 12.1.4. To consider applications to the PCC to have a determination and/or a Sanction reviewed or set aside on good cause shown where the Respondent has failed to respond to the Complaint notification from the office of the Designated Disciplinary Officer; and
  - 12.1.5. To provide recommendations to the Board in respect of cancellations of membership and/or associateship in terms of By-law 26/32/38 above;
  - 12.1.6. In consultation with the Designated Disciplinary Officer, advise the Board on the matters and Fines to be included in Schedules of the Code from time to time.
- 12.2. The PCC constituted of 3 (three) members is authorised to consider and determine:
- 12.2.1. Matters referred to it in terms of paragraph 9.5;
  - 12.2.2. Whether any Respondent meets the Fit and Proper requirements in order to become or remain a Member or Associate or Trainee of the Institute. The Committee may exercise this function irrespective of whether a Complaint has been lodged with the office of the Designated Disciplinary Officer or not. In determining whether any such Respondent meets the Fit and Proper requirements the Committee may undertake such investigations as it considers necessary;
  - 12.2.3. Where it appears to the PCC that a Respondent may no longer meet the Fit and Proper requirements, it may convene an enquiry at which the Respondent shall be called upon to give evidence as to his or her Fit and Proper status, although he or she may not be compelled to provide evidence. Both he or she and the PCC may call witnesses to give evidence at an oral enquiry and/or may be called upon to file evidence in the form of affidavits. A finding of no longer Fit and Proper must result in the cancellation of membership; associateship or traineeship. The PCC must provide written reasons for its findings, which findings shall be final. For the avoidance of doubt, a finding by the PCC as to the Fit and Proper status of a Respondent cannot be appealed to the DC;
  - 12.2.4. Where a Respondent has been found guilty in criminal proceedings in a court in the Republic of fraud, theft, robbery, extortion, forgery, or any criminal offence involving dishonesty, the PCC shall convene an enquiry in terms of paragraph 12.2.2 in matters where the matter has not already been adjudicated on under the cancellation of membership and/or associateship provisions.
  - 12.2.5. Where the conduct of a Respondent has been investigated or dealt with by the IRBA, whether as a result of a reference in terms of paragraph 8.1.3.1 of the Code or otherwise, and the IRBA or any committee of the IRBA:

- 12.2.5.1. has found the Respondent not guilty of any alleged misconduct, the Institute shall be obliged to accept that finding for the purposes of these By-laws and to dispose of the matter without taking any further steps against the Respondent in relation to the Complaint; or
  - 12.2.5.2. has found the Respondent guilty of one or more of the charges of misconduct and has sentenced him or her the matter shall be referred to the PCC which shall be obliged to accept that finding and must convene an enquiry in terms of paragraph 12.2;
- 12.3. Notwithstanding anything to the contrary contained in these By-laws:
- 12.3.1. If the IRBA or any committee of the IRBA has investigated or dealt with the alleged misconduct of a Respondent and has found him or her not guilty thereof on the grounds that the IRBA or any committee did not have jurisdiction to investigate that conduct, then the PCC 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, including a referral to the DC in matters outside the scope of Schedules;
  - 12.3.2. 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 a conviction or finding, and it shall not be necessary for any such purposes to adduce any evidence other than evidence of the conviction or finding in any proceedings in terms of the By-laws or the Code.

### **13. FIT AND PROPER ENQUIRIES RELATED TO APPLICANTS**

- 13.1. The PCC may make findings on the professional competence and Fit and Proper status of applicants for membership, associateship and for registration of training contracts with the Institute. In this regard, the PCC may make a finding whether an applicant is Fit and Proper to practice as a Member, Associate or Trainee Accountant. In the case of a finding that an applicant is not Fit and Proper the committee may:
- 13.1.1. impose any further conditions on the applicant for a further determination of his or her professional competence and/or Fit and Proper status; or
  - 13.1.2. disqualify such applicant from applying to the PCC for a further determination of his/her professional competence and/or Fit and Proper Status, or for such a period as may be determined by the PCC.
- 13.2. The PCC may make recommendations to other Committees and Business Units of the Institute where deemed appropriate.

### **14. POWERS AND DUTIES OF A DC**

- 14.1. If the Designated Disciplinary Officer makes a determination (with or without the advice of the PCC) that a Complaint amounts to a prima facie case of misconduct that falls outside of the ambit of Schedules of the Code, he or she must refer the Complaint to the DC.
- 14.2. The Designated Disciplinary Officer may determine, on a case by case basis, whether the referral of the Complaint to the DC should be accompanied by a charge sheet. The

charge sheet shall be drafted on the basis of, inter alia, the Complaint, any subsequent investigations into the matter conducted by the Institute or the Designated Disciplinary Officer, and/or the Respondent's response to the Complaint which is delivered to the Designated Disciplinary Officer in terms of paragraph 10

- 14.3. The DC may also issue Settlement Orders as provided for in paragraph 15 of this Code.
- 14.4. DC Hearings shall be conducted at a venue determined by the Designated Disciplinary Officer and shall be open to the public, unless exceptional circumstances exist which in the opinion of the DC involved with the matter warrant such hearings being held in camera.
- 14.5. Subject to paragraphs 14.6 and 14.7 below, before the commencement of adjudication of the complaint, the DC may determine that a hearing, or any part thereof, be conducted:
  - 14.5.1. electronically;
  - 14.5.2. on the basis of affidavits and/or witness statements and/or documents only; or
  - 14.5.3. by way of an oral hearing.
- 14.6. If the Respondent fails to respond to the invitation to make representations within the period stipulated in paragraph 0, the DC may consider the Complaint, together with any charge sheet provided in terms of 14.2, in the absence of the Respondent's representations and may make such findings as to guilt and/or Sanction as it considers appropriate having due regard to the evidence before it and provide reasons for its determination.
- 14.7. If the DC decides to determine the matter on the basis of affidavits and/or witness statements and/or documents only, that is, without an oral hearing, the following procedure shall apply:
  - 14.7.1. Upon receipt of the Complaint, including a charge sheet if one has been provided in terms of 14.2, the DC shall either provide a copy of the Complaint (and charge sheet, as the case may be) to the Respondent and invite the Respondent to provide a response thereto on affidavit within 21 (twenty-one) days, or such further period as permitted by the DC, or if it considers it inappropriate to disclose to the Respondent the identity of the Complainant who is a "whistle blower", the DC shall provide the Respondent with a copy of the charge sheet, if one has been prepared, and shall inform the Respondent of the nature of the Complaint with sufficient detail to enable the Respondent to respond thereto. The Respondent must also be advised that his/her response may be used in evidence against him or her;
  - 14.7.2. The DC may request further particulars from the Complainant or the Respondent at any time within a reasonable time as determined by the DC;
  - 14.7.3. The DC must invite the Institute and the Respondent (who is entitled to legal representation) to make submissions based on the affidavits orally or in writing, as it may direct; and
  - 14.7.4. If, in the course of proceedings in terms of this paragraph, the DC considers it in the interests of a fair process that oral evidence or further documentary may be produced, it may so order.

- 14.8. If the DC decides in its discretion to consider the Complaint, and charge sheet if one has been provided in terms of 14.2 above, by holding an oral hearing, the following procedure shall apply:
  - 14.8.1. The Respondent and any other witnesses shall be given reasonable notice of the date, time and venue of the disciplinary hearing.
  - 14.8.2. The Respondent shall be entitled to legal representation at the disciplinary hearing and to call witnesses but the Respondent shall not be a compellable witness.
  - 14.8.3. The DC shall have the power to order the production for inspection of any books, documents and papers, inclusive of electronic records, in the possession of or under the control of the Institute, the Respondent, or from any other Member or Associate or Trainee Accountant, if it considers such books, documents and papers necessary for a just determination of the issues.
  - 14.8.4. If any person other than the Respondent whose evidence may be material has not been called as a witness, the DC may call such person as a witness.
  - 14.8.5. Any Member, Associate, or Trainee Accountant from whom evidence is required (including the production of relevant documentation) shall be obliged to provide such evidence whether in person at an oral disciplinary hearing or on affidavit, as the case may be. Failure by a Member, Associate, or Trainee Accountant to co-operate with any hearing or investigation conducted by the DC or PCC shall constitute Punishable Conduct.
  - 14.8.6. The DC shall retain discretion to admit, in addition to oral evidence, affidavits or other documentary evidence.
- 14.9. The office of the Designated Disciplinary Officer is permitted to communicate with the Complainant, Respondent and/or any other relevant person on behalf of the DC as set out in paragraphs 14.6 and 14.7 above.
- 14.10. Unless in its discretion and after hearing argument the DC decides to the contrary, the Institute shall commence with adducing evidence.
- 14.11. The chairperson of the DC shall be permitted to engage the services of a Legal Practitioner at any stage of a hearing of the DC to advise him or her on points of law and procedure in private.
- 14.12. The office of the Designated Disciplinary Officer may seek to amend a charge sheet at any time:
  - 14.12.1. after the charge sheet furnished to the DC and before the commencement of the DC hearing, such amendment to be effected by way of notice from the office of the Designated Disciplinary Officer to the DC and the Respondent accompanied by an updated charge sheet reflecting the proposed amendments; and/or
  - 14.12.2. at any time after the commencement of the DC hearing and prior to the DC making its determination, on the grounds that an error exists in the formulation of a charge, a charge is not properly articulated in and / or has been omitted from the charge sheet in the charge sheet and/or new information comes to light during the DC hearing which requires or precipitates the amendment of the charge sheet. Such amendment shall be effected by way of notice from the office of the Designated Disciplinary Officer or pro-forma evidence leader to the



DC and the Respondent accompanied by an updated charge sheet reflecting the proposed amendment.

The DC shall have the power to refuse an amendment to a charge sheet sought in terms of this paragraph only if the amendment is contrary to the interests of justice or fairness.

Following the amendment of a charge sheet in terms of this paragraph, the DC shall have the power to regulate proceedings as it deems fit in the interests of justice.

- 14.13. If the DC determines that the Respondent is guilty of punishable conduct, it shall make a finding to that effect and thereupon it shall have full power to order one or more of the following Sanctions against the Respondent:
  - 14.13.1. a caution;
  - 14.13.2. a reprimand;
  - 14.13.3. a Fine of up to a maximum amount to be determined by the Board from time to time;
  - 14.13.4. suspension from membership, associateship or registration as a Trainee Accountant for a period not exceeding 5 (five) years;
  - 14.13.5. exclusion from membership or associateship or from registration as a Trainee Accountant;
  - 14.13.6. disqualification from applying for membership or associateship or registration as a Trainee Accountant permanently or for such period as the DC may determine, or subject to such conditions as the DC may determine;
  - 14.13.7. Delivery of documents which are the subject matter of a Complaint unlawfully withheld by a Respondent from a Complainant; or any person or entity represented by the Complainant; and/or
  - 14.13.8. Re-payment of client money which is the subject matter of a Complaint unlawfully withheld from a Complainant.
- 14.14. Where the DC imposes a Fine in terms of paragraph 14.13.3 it may suspend the payment of the Fine or any part thereof on such conditions as it may determine; and where the DC imposes a punishment in terms of paragraphs 14.13.4, 14.13.5 or 14.13.6, it may suspend the coming into effect of the punishment on such conditions as it may determine.
- 14.15. A Fine or a repayment of client money must be made within 30 (thirty) days of the date on which the Respondent is notified of the Fine or Re-payment order, or within such other period stipulated by the DC.
- 14.16. Once the DC has considered the matter and made its findings, the office of the Designated Disciplinary Officer must forthwith notify the Respondent of the finding and Sanction and must enter this in the Complaints Register.
- 14.17. The DC may make recommendations to other Committees and Business Units of the Institute where deemed appropriate.
- 14.18. The DC shall have the power to order any Respondent upon whom any Sanction is imposed under these By-laws to pay the Costs, or such part of those Costs as the DC may consider reasonable, the quantum of which shall be quantified and be certifiable as a Debt to the Institute.

- 14.19. Any finding by the DC 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 regional and district associations, as the case may be.
- 14.20. Any person who has been excluded from membership, associateship or registration in terms of paragraph 14.13.5 shall not be entitled to apply for re-admission as a Member, Associate or Trainee Accountant until the expiry of a period of 10 (ten) years reckoned from the date of such exclusion; provided, however, that the DC, on application and after at least 1 (one) year has passed, may reduce this period by up to 5 (five) years in any case at their discretion.
- 14.21. A member's disciplinary record may be expunged from his or her membership record, depending on the nature of the offence committed, as provided for in Schedules to these By-laws.
- 14.22. The Designated Disciplinary Officer may appoint a Member, Associate Member, or employee of the Institute, or may instruct a Legal Practitioner, to act as the pro-forma evidence leader to present to the DC any matter which has been referred to it. For the avoidance of doubt, where the Designated Disciplinary Officer appoints an attorney to act as the pro-forma evidence leader, such attorney shall be permitted to brief counsel to appear on behalf of the Institute.
- 14.23. Any finding and Sanction imposed by a DC, must be motivated by immediate oral reasons or written reasons within 30 (thirty) days, as the circumstances may require.

## **15. SETTLEMENT ORDERS**

- 15.1. At any time following the referral of a Complaint by the Designated Disciplinary Officer to the DC, but prior to the commencement of the hearing in relation to the Complaint, the Respondent and the Designated Disciplinary Officer may enter into without prejudice settlement discussions at the initiation of either party in respect of the Complaint.
- 15.2. Where, following settlement discussions, terms of settlement are agreed between the Designated Disciplinary Officer and the Respondent, the Designated Disciplinary Officer shall prepare a proposed settlement agreement and draft settlement order which will be referred for consideration to the DC to determine whether the proposed settlement agreement should be approved.
- 15.3. In determining a referral under paragraph 15.2, the DC may provide the parties with an opportunity to make verbal representations on the proposed agreement.
- 15.4. If the DC approves the proposed settlement agreement they shall sign the draft settlement order on behalf of the Institute and the Respondent shall sign the settlement agreement personally or by his/her legal representative duly authorised thereto.
- 15.5. The fact that the Designated Disciplinary Officer has entered into settlement discussions in accordance with this paragraph, shall not delay the appointment of a DC, any of its functions, or a hearing.

## **16. STANDARD OF PROOF AND EVIDENCE**

- 16.1. In all disciplinary matters to determine whether a Respondent has committed Punishable Conduct dealt with by the PCC and the DC, the civil standard of proof on a balance of probabilities shall apply.
- 16.2. When evidence given at the hearing of a complaint by the DC has been determined to be provided orally, it may be effected in person, electronically or any other manner which facilitates the oral submission of evidence.
- 16.3. The DC 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.

## **17. PUBLICITY OF DISCIPLINARY COMPLAINTS, INVESTIGATIONS, ACTIONS AND PROCEEDINGS**

- 17.1. Notwithstanding anything contained in these By-laws, the CEO may, at any time, make such public statements as he or she thinks fit concerning any matter relating to or connected with the Institute's performance of its disciplinary obligations and may, at any time, make a public statement concerning any Complaint or investigation or action instituted against a Respondent ("public disciplinary statement").
- 17.2. The CEO may name or otherwise identify a Respondent referred to in paragraph 17 in a public disciplinary statement in the following circumstances:
  - 17.2.1. If the name of the Respondent and the general nature of the complaint, investigation, or action instituted against the Member is already a matter of public knowledge; or
  - 17.2.2. It reasonably appears to the CEO that:
    - 17.2.2.1. the failure to name or otherwise identify such Respondent would defeat the purpose for which the public disciplinary statement is made;
    - 17.2.2.2. the public disciplinary statement is necessary or desirable in order to maintain public confidence in the Institute or its Members;
    - 17.2.2.3. in the event that the Respondent has been issued with a charge sheet (whether final or in draft form), the naming or other identification of the Member is in the public interest;
    - 17.2.2.4. in exceptional circumstances and in the event that the Member has not been issued with a charge sheet (whether final or in draft form), the naming or other identification of the Member is both urgent and in the public interest; or
    - 17.2.2.5. in the opinion of the CEO it is otherwise in the public interest to publicly identify the Respondent; or
  - 17.2.3. The matter is referred to a hearing which is open to the public.
- 17.3. Prior to the issuing of a public disciplinary statement in which a Respondent is named or otherwise identified, the CEO shall provide 48 (forty-eight) hour notice of his or her intention to issue the statement to him or her.

- 17.4. Subject to the provisions of paragraph 14.6, the CEO, with the assistance of the office of the Designated Disciplinary Officer, shall cause to be published on the Institute's web-site, the details of future DC hearings. Such details of future DC hearings shall contain the following information:
- 17.4.1. the name of the Member and the membership number;
  - 17.4.2. the case number;
  - 17.4.3. a summary of the charges preferred against the Member (the Complaint/s);
  - 17.4.4. the date of the disciplinary hearing;
  - 17.4.5. the time of the disciplinary hearing; and
  - 17.4.6. the place where the disciplinary hearing will take place.

## **18. RECORD AND PUBLICATION OF FINDINGS AND DECISIONS**

- 18.1. All findings and decisions of the Committees and/or the Designated Disciplinary Officer shall take effect when made and shall be reported to the Board; by the office of the Designated Disciplinary Officer.
- 18.2. Where the Committees and/or Designated Disciplinary Officer has imposed a Sanction on a Respondent, the relevant Committee shall direct that the name of the Respondent, (and if the committee so directs, also the name of his or her firm), a brief description of the offence and the penalty imposed as well as any information that is considered appropriate by the relevant committee, be published on the website of the Institute and in such further manner as the relevant committee may consider appropriate, including but not limited to, in member communications or in Accountancy SA magazine.
- 18.3. Where the PCC or the DC has found a Respondent not guilty of the complaint, no publication of that fact may take place unless the Respondent has requested publication (which request shall be made within ten (10) days of the notification to the Respondent of the relevant committee's finding). In the event of a request by the Respondent for publication, the relevant committee shall retain the discretion to direct what information regarding the not guilty finding will be published and the manner in which the information will be published.

## **19. TRANSITIONAL PROVISIONS**

- 19.1. All Complaints lodged prior to the adoption of the Code by the Board shall be dealt with in terms of the By-laws applicable at the time the Complaint was lodged subject to the proviso that any Respondent in respect of whom a Complaint is lodged relating to conduct falling under Schedules (as applicable) prior to coming into force of the Code may elect to dispose of the matter by paying an optional admission of guilt Fine as determined by the Designated Disciplinary Officer.

**SCHEDULE 1A TO THE DISCIPLINARY CODE AND PROCEDURES  
(APPLICABLE TO CHARTERED ACCOUNTANTS)**

	<b>Punishable Conduct</b>	<b>First Offence Sanction</b>	<b>Second Offence Sanction</b>	<b>Period After Which Disciplinary Record May Be Expunged (on Application)</b>
1	Contravening any of the provisions of the Chartered Accountant's (Private) Designation Act, 67 of 1993	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
2	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	R25 000 (twenty-five thousand rand)	R50 000 (fifty thousand rand)	3 (three) years for first offence 6 (six) years for second offence
3	Unlawfully failing to account for, or unreasonably delaying an accounting for, any money or property received for or on behalf of a client or any other person when called upon to do so	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
4	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	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
5	Directly or indirectly stipulating for or receiving from a Trainee Accountant who is or has been serving under a training contract, or from any other person, any payment, reward,	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence

	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			
6	Without reasonable cause failing to resign from a professional appointment when requested by the client to do so	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
7	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	R20 000 (twenty thousand rand)	R35 000 (thirty five thousand rand)	3 (three) years for first offence 6 (six) years for second offence
8	Failing to comply within a reasonable time with an order, requirement or request from the Institute	R30 000 (thirty thousand rand)	R45 000 (forty-five thousand rand)	3 (three) years for first offence 6 (six) years for second offence
9	Failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute;	R25 000 (twenty-five thousand rand)	35 000 (thirty-five thousand rand)	3 (three) years for first offence 6 (six) years for second offence
10	Discharging the contract of a Trainee Accountant without supporting evidence of required level of competence	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
11	Failing to retain records of a Trainee Accountant for period stipulated under the Training Regulations	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence

12	In terms of 4.2.6, conducting himself or herself in a manner which in the opinion of the PCC, tends to bring the profession of Accountancy into disrepute, but which conduct is not considered to be serious enough to warrant referral to the DC	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
13	Contravening professional behavior requirements as set out in the Code of Professional Conduct, but which conduct is not considered to be serious enough to warrant referral to the DC	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence

**SCHEDULE 1B TO THE DISCIPLINARY CODE AND PROCEDURES  
(APPLICABLE TO CHARTERED ACCOUNTANTS)**

	<b>Punishable Conduct</b>	<b>First Offence Sanction</b>	<b>Second Offence Sanction</b>	<b>Period After Which Disciplinary Record May Be Expunged (on Application)</b>
1	Failing to submit continuing Professional Development annual Declaration timeously	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence  10 (ten) years for second offence
2	Failure to comply with the requirements of the continuing Professional Development Policy and/or By-laws related to continuing Professional Development	R100 000 (one hundred thousand rand)	(refer to DC)	5 (five) years for first offence  Not applicable for second offence
3	Failure to timeously submit required evidence when selected for annual continuing Professional Development audit	R100 000 (one hundred thousand rand);  -R30 000 (thirty thousand rand) if all required evidence has been provided after submission deadline	(refer to DC)	5 (five) years for first offence  Not applicable for second offence
4	Failing to submit Tax Practitioner annual Declaration timeously	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence  10 (ten) years for second offence
5	Failure to comply with the requirements of the Tax Practitioner related Policies and/or By-laws	R100 000 (one hundred thousand rand)	(refer to DC)	5 (five) years for first offence  Not applicable for second offence
6	Failure to timeously submit required evidence when selected for annual Tax Practitioner audit	-R100 000 (one hundred thousand rand);  -R30 000 (thirty thousand rand) if all required evidence has been provided after submission deadline	(refer to DC)	5 (five) years for first offence  Not applicable for second offence



7	Failure to release client or former client SARS e-filing profile	<p>-R100 000 (one hundred thousand rand) if there has been substantial financial or other substantial prejudice to client;</p> <p>-R50 000 (fifty thousand rand) if there has been some financial prejudice to client but not amounting to substantial prejudice; and</p> <p>-R30 000 (thirty thousand rand) if there has been no financial prejudice to client</p>	(refer to DC)	<p>5 (five) years for first offence</p> <p>Not applicable for second offence</p>
8	Unreasonably withholding of client or former client tax documents	<p>-R100 000 (one hundred thousand rand) if there has been substantial financial or other substantial prejudice to client;</p> <p>-R50 000 (fifty thousand rand) if there has been some financial prejudice to client but not amounting to substantial prejudice; and</p> <p>-R30 000 (thirty thousand rand) if there has been no financial prejudice to client</p>	(refer to DC)	<p>5 (five) years for first offence</p> <p>Not applicable for second offence</p>

**SCHEDULE 2A TO THE DISCIPLINARY CODE AND PROCEDURES  
(APPLICABLE TO COLLEGE OF GENERAL ACCOUNTANTS)**

	<b>Punishable Conduct</b>	<b>First Offence Sanction</b>	<b>Second Offence Sanction</b>	<b>Period After Which Disciplinary Record May Be Expunged (on Application)</b>
1	Contravening any of the provisions of the Chartered Accountant's (Private) Designation Act, 67 of 1993	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
2	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	R25 (twenty-five thousand rand)	R50 000 (fifty thousand rand)	3 (three) years for first offence 6 (six) years for second offence
3	Unlawfully failing to account for, or unreasonably delaying an accounting for, any money or property received for or on behalf of a client or any other person when called upon to do so	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
4	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	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
5	Directly or indirectly stipulating for 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	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence

	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			
6	Without reasonable cause failing to resign from a professional appointment when requested by the client to do so	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
7	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	R20 000 (twenty thousand rand)	R35 000 (thirty five thousand rand)	3 (three) years for first offence 6 (six) years for second offence
8	Failing to comply within a reasonable time with an order, requirement or request from the Institute	R30 000 (thirty thousand rand)	R45 000 (forty-five thousand rand)	3 (three) years for first offence 6 (six) years for second offence
9	Failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute	R25 000 (twenty-five thousand rand)	R35 000 (thirty-five thousand rand)	3 (three) years for first offence 6 (six) years for second offence
10	Discharging the contract of a Trainee Accountant without supporting evidence of required level of competence	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
11	Failing to retain records of a Trainee Accountant for period stipulated under the Training Regulations	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
12	In terms of 5.2.3, conducting himself or herself in a manner which in the opinion of the PCC, tends to bring	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence

	the profession of Accountancy into disrepute, but which conduct is not considered to be serious enough to warrant referral to the DC			10 (ten) years for second offence
13	Contravening professional behaviour requirements as set out in the Code of Professional Conduct, but which conduct is not considered to be serious enough to warrant referral to the DC	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence

**SCHEDULE 2B TO THE DISCIPLINARY CODE AND PROCEDURES  
(APPLICABLE TO THE COLLEGE OF GENERAL ACCOUNTANTS)**

	<b>Punishable Conduct</b>	<b>First Offence Sanction</b>	<b>Second Offence Sanction</b>	<b>Period After Which Disciplinary Record May Be Expunged (on Application)</b>
1	Failing to submit continuing Professional Development annual Declaration timeously	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
2	Failure to comply with the requirements of the continuing Professional Development Policy and/or By-laws related to continuing Professional Development	R100 000 (one hundred thousand rand)	(refer to DC)	5 (five) years for first offence Not applicable for second offence
3	Failure to timeously submit required evidence when selected for annual continuing Professional Development audit	-R100 000 (one hundred thousand rand); -R30 000 (thirty thousand rand) if all required evidence has been provided after submission deadline	(refer to DC)	5 (five) years for first offence Not applicable for second offence
4	Failing to submit Tax Practitioner annual Declaration timeously	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
5	Failure to comply with the requirements of the Tax Practitioner related Policies and/or By-laws	R100 000 (one hundred thousand rand)	(refer to DC)	5 (five) years for first offence Not applicable for second offence
6	Failure to timeously submit required evidence when selected for annual Tax Practitioner audit	-R100 000 (one hundred thousand rand); -R30 000 (thirty thousand rand) if all required evidence has been provided after submission deadline	(refer to DC)	5 (five) years for first offence Not applicable for second offence

7	Failure to release client or former client sars e-filing profile	<p>-R100 000 (one hundred thousand rand) if there has been substantial financial or other substantial prejudice to client;</p> <p>-R50 000 (fifty thousand rand) if there has been some financial prejudice to client but not amounting to substantial prejudice; and</p> <p>-R30 000 (thirty thousand rand) if there has been no financial prejudice to client</p>	(refer to DC)	<p>5 (five) years for first offence</p> <p>Not applicable for second offence</p>
8	Unreasonably withholding of client or former client tax documents	<p>-R100 000 (one hundred thousand rand) if there has been substantial financial or other substantial prejudice to client;</p> <p>-R50 000 (fifty thousand rand) if there has been some financial prejudice to client but not amounting to substantial prejudice; and</p> <p>-R30 000 (thirty thousand rand) if there has been no financial prejudice to client</p>	(refer to DC)	<p>5 (five) years for first offence</p> <p>Not applicable for second offence</p>

**SCHEDULE 3A TO THE DISCIPLINARY CODE AND PROCEDURES  
(APPLICABLE TO COLLEGE OF ACCOUNTING TECHNICIANS)**

	<b>Punishable Conduct</b>	<b>First Offence Sanction</b>	<b>Second Offence Sanction</b>	<b>Period After Which Disciplinary Record May Be Expunged (on Application)</b>
1	Contravening any of the provisions of the Designation Act	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
2	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	R25 000 (twenty-five thousand rand)	R50 000 (fifty thousand rand)	3 (three) years for first offence 6 (six) years for second offence
3	Unlawfully failing to account for, or unreasonably delaying an accounting for, any money or property received for or on behalf of a client or any other person when called upon to do so	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
4	Without reasonable cause failing to resign from a professional appointment when requested by the client to do so	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
5	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	R20 000 (twenty thousand rand)	R35 000 (thirty-five thousand rand)	3 (three) years for first offence 6 (six) years for second offence
6	Failing to comply within a reasonable time with an order, requirement, or request from the Institute	R30 000 (thirty thousand rand)	R45 000 (forty-five thousand rand)	3 (three) years for first offence 6 (six) years for second offence

7	Failing after demand to pay any subscription or any fee, levy or other charge payable to the Institute	R25 000 (twenty-five thousand rand)	R35 000 (thirty-five thousand rand)	3 (three) years for first offence 6 (six) years for second offence
8	In terms of 6.2.3, conducting himself or herself in a manner which in the opinion of the PCC, tends to bring the profession of Accountancy into disrepute, but which conduct is not considered to be serious enough to warrant referral to the DC	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
9	Contravening professional behaviour requirements as set out in the Code of Professional Conduct, but which conduct is not considered to be serious enough to warrant referral to the DC	R50 000 (fifty thousand rand)	R80 000 (eighty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence



**SCHEDULE 3B TO THE DISCIPLINARY CODE AND PROCEDURES  
(APPLICABLE TO COLLEGE OF ACCOUNTING TECHNICIANS)**

	<b>Punishable Conduct</b>	<b>First Offence Sanction</b>	<b>Second Offence Sanction</b>	<b>Period After Which Disciplinary Record May Be Expunged (on Application)</b>
1	Failing to submit continuing Professional Development annual Declaration timeously	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
2	Failure to comply with the requirements of the continuing Professional Development Policy and/or By-laws related to continuing Professional Development	R100 000 (one hundred thousand rand)	(refer to DC)	5 (five) years for first offence Not applicable for second offence
3	Failure to timeously submit required evidence when selected for annual continuing Professional Development audit	-R100 000 (one hundred thousand rand); -R30 000 (thirty thousand rand) if all required evidence has been provided after submission deadline	(refer to DC)	5 (five) years for first offence Not applicable for second offence
4	Failing to submit Tax Practitioner annual Declaration timeously	R30 000 (thirty thousand rand)	R60 000 (sixty thousand rand)	5 (five) years for first offence 10 (ten) years for second offence
5	Failure to comply with the requirements of the Tax Practitioner related Policies and/or By-laws	R100 000 (one hundred thousand rand)	(refer to DC)	5 (five) years for first offence Not applicable for second offence
6	Failure to timeously submit required evidence when selected for annual Tax Practitioner audit	-R100 000 (one hundred thousand rand);	(refer to DC)	5 (five) years for first offence Not applicable for second offence

		-R30 000 (thirty thousand rand) if all required evidence has been provided after submission deadline		
7	Failure to release client or former client sars e-filing profile	-R100 000 (one hundred thousand rand) if there has been substantial financial or other substantial prejudice to client;  -R50 000 (fifty thousand rand) if there has been some financial prejudice to client but not amounting to substantial prejudice; and  -R30 000 (thirty thousand rand) if there has been no financial prejudice to client	(refer to DC)	5 (five) years for first offence  Not applicable for second offence
8	Unreasonably withholding of client or former client tax documents	-R100 000 (one hundred thousand rand) if there has been substantial financial or other substantial prejudice to client;  -R50 000 (fifty thousand rand) if there has	(refer to DC)	5 (five) years for first offence  Not applicable for second offence

		been some financial prejudice to client but not amounting to substantial prejudice; and  -R30 000 (thirty thousand rand) if there has been no financial prejudice to client		
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*\*Amendments effected by Board on 12 May 2022:*

*Substitution by the term “Office of the Designated Disciplinary Officer”;*

*Amendments made to By-laws:*

*2.2.2; 2.2.6; 2.2.7; 2.2.8; 2.2.10; 2.2.16; 2.2.18; 2.2.19; 2.2.23; 2.2.5; 3.1; 7.1; 7.2; 8.1; 9.1; 9.3; 9.11;10.1; 10.2; 11.1; 12.1.1; 12.1.3; 12.1.4; 12.1.5; 12.2.4; 14.9; 18.1; and 18.2*