

**MEMORANDUM OF INCORPORATION**

**REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 2008**

**THE SOUTH AFRICAN INSTITUTE OF TAX PROFESSIONALS (NPC)  
REGISTRATION NUMBER: 20070147308**

(hereinafter referred to in the rest of the Memorandum of Incorporation as “the Company”)

**NON-PROFIT COMPANY**

**INCORPORATED FOR A COMMUNAL OR GROUP INTEREST BENEFIT OR A PUBLIC BENEFIT**

**SECTION 10 – SCHEDULE 1 COMPANY**

**DIRECTORS AND MEMBERS WITH VOTING RIGHTS**

## DEFINITIONS

In the Memorandum of Incorporation, the following words and expressions shall, unless the context otherwise requires, have the meanings assigned to them below and related expressions shall bear corresponding meanings:

**“Act” or “the Act”** – the Companies Act, Act 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to the Act (Companies Regulation 2(h) 2011);

**“Alternate Director”** – a person elected or appointed to serve, as the occasion requires, as a member of the Board of the Company in substitution for a particular elected or appointed Director of that Company (section 1 of Act 71/2008);

**“Audit”** – has the meaning set out in the Auditing Profession Act, 2005 (Act 26 of 2005) but does not include an “independent review” of Annual Financial Statements, as contemplated in section 30(2)(b)(ii)(bb) (section 1 of Act 71/2008);

**“Consideration”** – anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including:

- (a) any money, property, negotiable instrument, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly (section 1 of Act 71/2008);

**“Director”** – a member of the Board as contemplated in section 66 or an alternate Director, from time to time, and includes any person occupying the position of a Director or alternate Director, by whatever name designated. Director includes alternate Director and a Prescribed Officer or a person who is a Member of a Committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company’s Board (section 1 of Act 71/2008);

**“External Company”** – a foreign Company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2) (section 1 of Act 71/2008);

**“Financial assistance”** – is not defined in the Act but includes lending money, guaranteeing a loan or other obligation, and securing any debt or obligation; but does not include: lending money in the ordinary course of business by the Company whose primary business is the lending of money; an accountable advance to meet legal expenses in relation to a matter concerning the Company; or anticipated expenses to be incurred by the person on behalf of the Company; or an amount to defray the person’s expenses for removal at the Company’s request in terms of section 45 of the Act;

**“Financial Reporting Standards”** – with respect to any particular Company’s financial statements, means the standards applicable to that Company, as prescribed in terms of section 29(4) and (5) (section 1 of Act 71/2008);

**“Financial statements”** – includes: Annual Financial Statements and provisional Annual Financial Statements; interim or preliminary reports; group and consolidated financial statements in the case of a group of Companies; and financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on (section 1 of Act 71/2008);

**“Financial year end”** – is not defined in the Act but means the end of the accounting period covering 12 (twelve) consecutive months over which the Company determines earnings and profits. The financial year serves as a period of reference for the Company and does not necessarily correspond to the calendar year;

**“Holder”** – includes a person who holds a Membership in the Company (section 117(1)(e) of Act 71/2008);

**“IFRS”** – means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body (Companies Regulation 26(1)(b) 2011);

**“IFRS for SMEs”** – means the International Financial Reporting Standards for Small and Medium Enterprises as issued from time to time by the International Accounting Standards Board or its successor body (Companies Regulation 26(1)(c) 2011);

**“Incorporator”** – when used with respect to the Company incorporated in terms of the Act, means a person who incorporated that Company, as contemplated in section 13; or with respect to a pre-existing Company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that Company (section 1(a)(b) of Act 71/2008);

**“Independently compiled and reported”** – means that the Annual Financial Statements are prepared:

- (a) by an independent accounting professional;
- (b) on the basis of financial records provided by the Company; and
- (c) in accordance with any relevant financial reporting standards (Companies Regulation 26(1)(e)(i) to (iii) 2011);

**“Independent reviewer”** – means a person referred to in Companies Regulation 29(4) and who has been appointed to perform an independent review under this Regulation (Companies Regulation 29(1)(a) 2011);

**“Member”** – subject to the provisions of section 57, the holder of any Membership in the Company who is entered as such in the Company’s Members’ register. Section 57(1) stipulates that Member also includes a person who is entitled to exercise any voting rights in relation to the Company attached (section 1 of Act 71/2008);

**“Members’ meeting”** – with respect to any particular matter concerning the Company, means a meeting of those Members of the Company who are entitled to exercise voting rights in relation to that matter (section 1 of Act 71/2008);

**“Non-profit Company”** – means a Company –

- (a) incorporated for a public benefit or other object as required by Item 1(1) of Schedule 1, and
- (b) the income and property of which are not distributable to its Incorporators, Members, Directors, Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1.

**“Ordinary Resolution”** – a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8): at a Members’ meeting; or by Members acting other than at a meeting, as contemplated in section 60 (section 1 of Act 71/2008 as amended by section 1(1)(u) of Act 3/2011);

**“Prescribed Officer”** – a person who, within the Company, performs any function that has been designated by the Minister in terms of section 66(10) despite not being a Director of a particular Company. A person is a “prescribed officer” of the Company for all purposes of the Act if that person exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the Company; or regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the Company (section 1 of Act 71/2008 as amended by section 1(1)(x) of Act 3/2011);

**“Quorum”** – is not defined in the Act but means the minimum number of Members of the Company, who are entitled to vote, that must be present to make a Members’ Meeting valid;

**“Restrictive conditions”** – is not defined in the Act but means conditions that limit, restrict or qualify the purposes, powers or activities of the Company in terms of section 15(2), section 16 and section 19(1) of Act 71/2008;

**“Ring-fenced provisions”** – is not defined in the Act but mean provisions specified in the Company’s Memorandum of Incorporation that limit, restrict or qualify the Company’s powers, capacity, purposes or activities in some way, provided for in terms of sections 15(2)(b) and (c) of the Act. The Act ensures that the general public is alerted to a Company’s restricted powers or capacity by requiring that such a Company’s name be immediately followed by the expression ‘(RF)’, an acronym for ‘ring-fenced’. Specifically, section 11(3)(b) provides that, if a Company’s Memorandum of Incorporation includes any provision contemplated in sections 15(2)(b) and (c) restricting or prohibiting the amendment of any particular provision of the Memorandum of Incorporation, its name must be immediately followed by the expression ‘(RF)’. There is a further requirement in section 13(3) which provides that, if a Company’s Memorandum of Incorporation includes any provision contemplated in sections 15(2)(b) or (c), the Notice of Incorporation: Ring-fencing Provisions filed by the Company must include a prominent statement drawing attention to each such provision, and its location in the Memorandum of Incorporation;

**“Section” or “Sections”** – refers to a section or sections of the Companies Act, Act 71 of 2008, as amended;

**“Solvency and Liquidity Test”** – has the meaning attributed thereto in section 4; being the test the Company satisfies if at a particular time, considering all reasonably foreseeable circumstances at that time:

- (a) the Company's assets, as fairly valued, equal or exceed its liabilities. It is the assets of the particular Company which must be valued (including any investment in subsidiaries). The Company must have a positive net asset value at a specific point in time. This is the solvency element of the test. It is also called the 'Balance Sheet Solvency' Test; and
- (b) it appears that the Company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 months after the date on which the test is considered or 12 months following the distribution. This is the liquidity element of the test. It is also called the 'Commercial Solvency Test' (section1 of Act 71/2008);

**“Special Resolution”** – means:

- (a) in the case of the Company, a resolution adopted with the support of at least 75% (seventy five percent) of the voting rights exercised on the resolution in terms of section 65(8) or a different percentage as contemplated in section 65(10) at a Members' Meeting, being any lower or higher percentage as provided for in section 65(9) read with section 65(10), provided that there must at all times be a margin of at least 10% between the Ordinary and Special Resolution; or by Members acting other than at a meeting, as contemplated in Section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated (section1 of Act 71/2008 as amended by section 1(1)(cc) of Act 3/2011) ;

**“Voting rights”** – with respect to any matter to be decided by the Company, means the rights of a Member to vote in connection with the matter, in the case of a non-profit Company (section1 of Act 71/2008).

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**MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY (NPC)**  
**REPUBLIC OF SOUTH AFRICA**  
**COMPANIES ACT, ACT NO 71 OF 2008**

In this Memorandum of Incorporation:

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, Act No 71 of 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act;
- (c) any reference to the Company is a reference to **The South African Institute of Tax Professionals (NPC)**;
- (d) the Schedules, Annexures and Forms attached to this Memorandum, if any, are part of the Memorandum of Incorporation.

**Adoption of Memorandum of Incorporation**

The former Memorandum of Association and Articles of Association adopted in terms of the repealed Companies Act, Act 61 of 1973, as amended, was repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation in accordance with the Companies Act, Act 71 of 2008, as amended, and adopted by Special Resolution of Members of the Company on [date to be inserted after meeting] in accordance with Section 16(1) of the Companies Act, Act 71 of 2008, as amended.

**Default Memorandum of Incorporation not to apply**

The standard form Memorandum of Incorporation for a Non-Profit Company referred to in Regulation 15(1)(a) shall not apply to the Company.

**Registered office and objects for which the Company is established**

Registered Office:

The registered office of the Company shall initially be situated at: Riverwalk Office Park, Building A, Corner of Matroosberg and Garsfontein Roads, Pretoria, 0081. The registered office may be changed from time to time by way of an ordinary resolution taken by members in general meeting.

Objects of the Company:

The primary objects of the Company are to:

1. Establish and provide a tiered recognition, certification and membership body for persons engaged in professional tax services at various levels, in the public, academia, corporate and private sectors.
2. Afford its members a professional identity and professional designation.
3. Take such action as may be necessary to attain, improve and sustain the status, professional image and conduct of its members, their professional designations, occupational qualifications, and the standing and practices of the tax profession in general.

4. To proactively participate and comply with the national educational and developmental agenda set by government from time-to-time.
5. Provide its members and the tax profession with a network through which they are able to share knowledge, skill and experience with one another, the general public and revenue authorities, nationally and internationally.
6. Provide the public, its members, government and revenue authorities with access to meetings, conferences, forums, seminars and lectures with the purpose of providing a public forum for the consideration and discussion of fiscal laws.
7. To print and publish independent technical peer reviewed papers, periodicals, journals, bulletins, newsletters and proceedings of meetings, conferences, summits, seminars and lectures for the spreading of information among members and the general public with respect to matters relating to fiscal legislation, including matters relating to the work of the Institute and its members.
8. To advance the members' and public's knowledge and understanding of fiscal legislation and related legislation nationally and internationally.
9. To encourage the study of taxation and fiscal laws in general, including, but not necessarily limited to, developing and providing occupational qualifications, learnerships, bursaries, grants, placement of learners and partnerships with member firms, Universities and other academic and other research institutions, in delivering such programs and interventions.
10. To conduct and encourage research into the reform of any fiscal laws and tax policy development, with due cognisance of the national developmental agenda of the Republic of South Africa set from time-to-time by government, through appropriate independent research, whether through the Institute secretariat or in partnership with approved recognised independent research institutions.
11. To encourage and maintain high ethical and professional standards amongst tax practitioners, tax professionals, tax administrators, customs and excise administrators, and other persons interested in or concerned with taxation and fiscal matters so as to protect the public and to encourage a wider and more useful understanding and practice of responsible fiscal citizenry.
12. To disseminate information concerning the work of the Institute, global sister institutes, its members, and revenue authorities.
13. To support and advance the practices of the public authorities' administering fiscal legislation and to support and advance the practices of government in implementing, applying and enforcing fiscal legislation.
14. Ensure and monitor compliance by members with fiscal laws, and the requirements of relevant national and international tax authorities.
15. To regulate its members' professional conduct and enforce its institutional professional code of conduct and by-laws specific to taxation practices.
16. Proactively contribute to the advancement of the practices and standing of the tax profession, nationally and internationally.
17. Undertake any other actions which may be conducive to attaining the above-mentioned objectives.

## ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY

### 1.1 Incorporation

- (1) The Company is incorporated as a Non-Profit Company, in terms of Schedule 1 and section 10 of the Companies Act, Act 71 of 2008.
- (2) The South African Institute of Tax Professionals (NPC) is incorporated in accordance with and governed by the unalterable provisions of the Companies Act, 2008, meaning a provision of the Companies Act that does not expressly contemplate that its effect on any particular Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Company's Memorandum of Incorporation or rules and the alterable provisions of the Companies Act, meaning a provision of the Companies Act in which it is expressly contemplated that its effect on a particular Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Company's Memorandum of Incorporation, subject to the limitation, extensions, variations or substitutions set out in this Company's Memorandum of Incorporation, and the provisions of this Company's Memorandum of Incorporation, which forms the Constitution of the Company. *Section 1*
- (3) The South African Institute of Tax Professionals (NPC) shall apply all of its assets and income, however derived, to advance its stated objects, as set out above in this Memorandum of Incorporation. The income and property of the Company shall not be distributable to its Incorporators, Members, Directors, Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1. *Item 1(2)(a) Schedule 1, item 1(3) Schedule 1*
- (4) The Memorandum of Incorporation does not limit or restrict the Company to acquire and hold securities issued by a profit Company or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects. The Non-Profit Company may conduct any business, including a commercial venture, as long as the funds generated are applied to advance the Company's primary object. *Item 1(2)(b)(i)(ii) Schedule 1*
- (5) The South African Institute for Tax Professionals (NPC) shall not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person, who is or was an Incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except –
  - (5.1) as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company, or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
  - (5.2) as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
  - (5.3) as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
  - (5.4) in respect of any legal obligation binding on the Company. *Item 1(3)(a)(i)(ii), Item 1(3)(b)(c)(d) Schedule 1 and section 122 (b) Act 3 of 2011.*

## 1.2 Powers of the Company

- (1) The South African Institute of Tax Professionals (NPC) is not subject to any restrictive conditions nor to any prohibitions regarding the amendment of this Memorandum of Incorporation, other than those contained in the Act.

## 1.3 Memorandum of Incorporation and Company Rules

- (1) In terms of this Memorandum of Incorporation the Company is not limited from making, amending or appealing any Company Rules as contemplated in section 15(3) of the Act, and the Board's capacity to make such Rules is not hereby limited or restricted. *Section 15(3)*
- (2) The Board shall publish these Company Rules in terms of section 15(3), (4) and (5) by dispatch of an electronic notice (e-mail) to members informing them of the publication of such rules and making a copy of the rules available for inspection and/or download by members on the company's web-site alternatively in any manner required or permitted by the Company's Memorandum of Incorporation, and by filing a copy of those Rules. *Section 15(3)(a)(b)*
- (3) Any Rules proposed by the Board will take effect 10 (ten) business days after the filing of that Rule, or on the later date specified in the Rule. Any Rule that takes effect as contemplated in this sub-article shall remain binding on an interim basis until put to a vote at the next General Meeting of the Company following on the publication of such rules and shall become permanently binding if ratified by an Ordinary Members Resolution.

## 1.4 Solvency and Liquidity Test

- (1) The South African Institute of Tax Professionals (NPC) shall satisfy the Solvency and Liquidity Test at a particular time if, considering all reasonably foreseeable financial circumstances of the Company at that time, the assets of the Company, as fairly valued, equal or exceed the liabilities of the Company, as fairly valued, and it appears that the Company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 (twelve) months after the date on which the test is considered, or in the case of a distribution, 12 (twelve) months following that distribution. *Section 4(1)(a) and (b) and section 2(a) of Act 3 of 2011*
- (2) The Board or any other person applying the Solvency and Liquidity Test to the Company shall consider a fair valuation of the Company's assets and liabilities, including a reasonably foreseeable contingent assets and liabilities, or may consider any other valuation of the Company's assets and liabilities that is reasonable in the circumstances. *Section 4(2)(b)(i)(ii)*

## 1.5 Interpretation of the Memorandum of Incorporation, anti-avoidance, exemptions and substantial compliance

- (1) When, in the Memorandum of Incorporation, a particular number of 'business days' is provided for between the happening of one event and another, the number of days shall be calculated by excluding the day on which the first such event occurs, including the day on or by which the second event is to occur, and excluding any public holiday, Saturday or Sunday that falls on or between the days. *Section 5(3)(a)(b)(c)*
- (2) If there is an inconsistency between any provision of the Act and the Memorandum of Incorporation, and a provision of any other national legislation, the provisions of both Acts shall apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second, and to the extent that it is impossible to apply or comply with one of the inconsistent provisions without

contravening the second, any applicable provisions of the Auditing Profession Act, Labour Relations Act, 1995 (Act 66 of 1995), Promotion of Access to Information Act, 2000 (Act 2 of 2000), Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), Public Finance Management Act, 1999 (Act 1 of 1999), Securities Services Act, 2004 (Act 36 of 2004), or Banks Act, Local Government: Municipal Finance Management Act, 2009 (Act No 56 of 2003), or Section 8 of the National Payment System Act, 1998 (Act No 78 of 1998), shall prevail in the case of an inconsistency involving any of them, except to the extent provided otherwise in section 30(8) or section 49(4) of the Act, or the provisions of this Act prevail in any other case, except to the extent provided for in this clause of this sub-article of the Memorandum of Incorporation or section 118(4) of the Act, and if there is a conflict between a provision of Chapter 8 of the Act and a provision of the Public Service Act, 1994 (Proclamation No. 103 of 1994) the provisions of that Act prevail. *Section 5(4)(a), section 5(4)(b)(i), section 5(4)(b)(ii), section 5(4)(b)(iii) and section 5(5)*

- (3) Any Director, or Member of the Company may apply to the Companies Tribunal for an administrative order exempting an agreement, transaction, arrangement, resolution or provision of the Company's Memorandum of Incorporation or Rules from any prohibition or requirement established by or in terms of an unalterable provision of this Act, other than a provision that falls within the jurisdiction of the Panel. *Section 6(2)*
- (4) An unaltered electronically or mechanically generated reproduction of any document, may be substituted for the original for any purpose for which the original could be used in terms of the Memorandum of Incorporation, subject to that reproduction satisfying any applicable prescribed requirements as to the form or manner of reproduction. *Section 6(7), section 6(9)(b)(i)(ii)*

If a provision of the Memorandum of Incorporation requires a document to be signed or initialled by or on behalf of a person, that signing or initialling may be effected in any manner provided for in the Electronic Communications and Transactions Act, or by two or more persons, it shall be sufficient if all of those persons sign a single original of the document, in person or in the manner provided for in the Electronic Communications and Transactions Act, or each of those persons signs a separate duplicate original of the document, in person or as provided in the Electronic Communications and Transactions Act, and in such case, the several signed duplicate originals, when combined, constitute the entire document. *Section 6(12)(a), section 6(12)(b)(i)(ii)*

## **1.6 Members Agreement and Company Rules**

- (1) Subject to the Board having the authority to make and revise Company Rules, the terms, conditions and obligations of membership as set out in the Institute's Constitution, By-Laws and Code of Conduct at the date of adoption of this Memorandum of Incorporation, shall apply and continue to be of force and effect until revised, repealed and/or replaced by the Board, whether in part or in its entirety, from time to time.
- (2) Subject to the Board having the authority to make Company Rules, a rule in terms of clause 1 and 2 of this sub-article of the Memorandum of Incorporation shall be consistent with the Act and the Company Memorandum of Incorporation, and any such rule that is inconsistent with the Act or the Company's Memorandum of Incorporation shall be void to the extent of the inconsistency, shall take effect on a date that is the later of 10 (ten) business days after the rule is filed in terms of this Memorandum of Incorporation, or the date, if any, specified in the rule, and shall be binding on an interim basis from the time it takes effect until it is put to a vote at the next General Members' meeting of the Company, and on a permanent basis only if it has been ratified by an Ordinary Resolution of Members at the said meeting.
- (3) If a rule that has been filed in terms clause 1 of this sub-article of the Memorandum of Incorporation is subsequently ratified in terms of this sub-article of the Memorandum of Incorporation, the Company shall file a notice of ratification within 5 (five) business days in the prescribed manner and form, or not ratified when put to a vote, the Company shall file a notice of non-ratification within 5 (five) business days after the vote, in

the prescribed manner and form, and the Company's Board is prohibited by the Memorandum of Incorporation from making a substantially similar rule within the ensuing 12 (twelve) months, unless it has been approved in advance by Ordinary Resolution of the Members. Any failure to ratify the rules of the Company shall not affect the validity of anything done in terms of those rules during the period that they had an interim effect as provided in clause 2 of this sub-article of the Memorandum of Incorporation. *Section 15(5)(a), section 15(5)(b)(i)(ii), section 15(5A)*

- (4) The Company's Memorandum of Incorporation, and any rules of the Company, are binding between the Company and each Member, between or among the Members of the Company, and between the Company and *each Director* of the Company, or any other person serving the Company as a Member of a committee of the Board, in the exercise of their respective functions within the Company. *Section 15(6)(a)(b), section 15(6)(c)(i)(ii)*
- (5) The Memorandum of Incorporation does not limit or restrict the Members of the Company entering into any agreement with one another concerning any matter relating to the Company, but any such agreement shall be consistent with the Act and the Company's Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with the Act or the Company's Memorandum of Incorporation shall be void to the extent of the inconsistency. *Section 15(7)*

## **1.7 Amending Memorandum of Incorporation**

- (1) The Company's Memorandum of Incorporation may be amended:
  - (1.1) in compliance with a Court Order in the following manner: an amendment to a Company's Memorandum of Incorporation required by any Court Order must be effected by a resolution of the Company's Board and does not require a Special Resolution as set out in this clause;
  - (1.2) to comply with any legal and/or statutory requirement imposed upon the Institute and/or its members from time to time, in the following manner: an amendment to a Company's Memorandum of Incorporation must be effected by a resolution of the Company's Board and does not require a Special Resolution as set out in this clause or
  - (1.3) at any other time if a Special Resolution to amend it:
    - (1.3.1) is proposed by the Board of the Company or Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a Resolution and
    - (1.3.2) is adopted at a Members' meeting or in accordance with section 60; and
    - (1.3.3) any resolution for the amendment of the Memorandum of Incorporation, must be approved by the Commissioner of the South African Revenue Service in terms of the Income Tax Act.

The Board, or any person authorised by the Board to do so, may alter any of the provisions of this Memorandum of Incorporation to correct any patent errors in spelling, punctuation, reference, grammar or similar defect on the face of the Memorandum of Incorporation, by publishing and filing a notice of alteration in terms of the Board's statutory power to do so.

Notice of any such alteration must be sent to each Director and Member by ordinary mail or e-mail at least 10 (ten) business days prior to the filing of the Notice of alteration with the Commission. Any director or

members that are of the view that the amendment exceeds the authority to correct a patent error or defect may approach the Tribunal in terms of section 17(2), to have the amendment set aside. *Section 15(2)(b), section 16, section 17(10(2), section 65(12)*

- (2) The Memorandum of Incorporation does not contain any provision, the amendment of which is either subject to requirements for its amendment in addition to those set out in section 16 of the Act or that is prohibited from being amended, as contemplated in section 15(2)(b) or (c) of the Act.

#### **1.8 Alterations, translations and consolidations of Memorandum of Incorporation**

- (1) In the event that the Company has filed its Memorandum of Incorporation and wishes to file one or more translations of it, it may file it in any official language or languages of the Republic.

A translation of the Company's Memorandum of Incorporation shall be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete translation of the Memorandum of Incorporation.

- (2) At any time after the Company has filed its Memorandum of Incorporation, and subsequently filed one or more alterations or amendments to it, the Company may file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, or the Commission may require the Company to file a consolidated revision of its Memorandum of Incorporation, as so altered or amended.

A consolidated revision of the Company's Memorandum of Incorporation shall be accompanied by a sworn statement by a Director of the Company, or a statement by an attorney or notary public, stating that the consolidated revision is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as altered and amended up to the date of the statement. *Section 17(6)(a)(b)*

#### **1.9 Authenticity of versions of Memorandum of Incorporation**

- (1) The Memorandum of Incorporation of the Company as altered or amended, prevails in any case of a conflict between it and a translation filed and a consolidated revision filed, unless the consolidated revision has subsequently been ratified by a Special Resolution at a general Members' Meeting of the Company.

The latest version of the Company's Memorandum of Incorporation that has been endorsed by the Commission in terms of this sub-article prevails in the case of any conflict between it and any other purported version of the Company's Memorandum of Incorporation. *Section 18(1)(a)(b) and section 18(2)*

- (2) In regards to the Memorandum of Incorporation of the Company and authentication of documents, any Director or the Company Secretary (if applicable) or any person appointed by the Directors for the purpose shall have power to authenticate:

- (2.1) any document affecting the constitution of the Company;
- (2.2) any resolution passed at the General Meeting or at a meeting of the Directors or at a meeting of any committee; and
- (2.3) any book, record, document or account relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or true extracts.

Where any book, record, document or account is elsewhere than at the registered office, the local Manager or officer of the Company having the custody of it shall be deemed to be a person appointed by the Directors for the purpose of this sub-article.

A document purporting to be a copy of any such resolution, or an extract from the minutes of any such meeting, which is certified, shall be conclusive evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that any minute so extracted is a true and accurate record of proceedings at a duly constituted meeting. *Section 18(1)(a)(b) and section 18(2)*

#### **1.10 Legal status of the Company**

- (1) From the date and time that the incorporation of the Company is registered, as stated in its registration certificate, the Company is a juristic person, which exists continuously until its name is removed from the Company's register in accordance with this Act, has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power, or having any such capacity, or the Company's Memorandum of Incorporation provides otherwise, is constituted in accordance with the unalterable provisions of this Act, the alterable provisions of the Act, subject to any negation, restriction, limitation, qualification, extension or other alteration that is contemplated in an alterable provision, and has been noted in the Company's Memorandum of Incorporation, and any further provisions of the Company as set out in the Company's Memorandum of Incorporation. *Section (1)(a), section 19(1)(b)(i), section 19(1)(c)(i)(ii)(iii)*
- (2) In terms of the Memorandum of Incorporation, no persons shall solely by reason of being an Incorporator, Member or Director of the Company, be liable for any liabilities and obligations of the Company. *Section 19(2)*

#### **1.11 Validity of the Company's Actions**

- (1) To the extent that the Company's Memorandum of Incorporation limits, restricts, qualifies the purposes, powers or activities of the Company, or limits the authority of the Directors to perform an act on behalf of the Company: The Members may by Ordinary Resolution ratify any action by the Company or the Directors, that is inconsistent with any such limit, restriction or qualification.

To the extent that the Company's Memorandum of Incorporation limits, restricts or qualifies the purposes, powers or activities of the Company: No action of the Company is void by reason only that, the action was prohibited by that limitation, restriction or qualification, or as a consequence of that limitation, restriction or qualification, the Directors had no authority to authorise the action by the Company, and in any legal proceeding, other than proceedings between the Company and its Members and its Directors or its Members and Directors of the Company, no person may rely on such limitation, restriction or qualification to assert that an action contemplated in this clause of the Memorandum of Incorporation is void. *Section 20(1)(a)(i)(ii), section 20(1)(b)(i)(ii), section 20(2)(3)*

## **ARTICLE 2 – MEMBERS' RIGHTS AND MEETINGS**

## 2.1 Membership and classes of membership

- (1) A Member of the Company is a person who holds Membership in, and specified rights in respect of the Company, in terms of Schedule 1 of the Act and who is entered as such in the Membership register of the Company in terms of Item 1(9) of Schedule 1 of the Act.
- (2) As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has two classes of members being, non-voting and voting members, each of the latter who has an equal vote in any matter to be decided on by Members of the Company. *Item 4(1) Schedule 1*
- (3) The Company may further provide for subcategories in terms of its voting members to differentiate between different practice licenses, industries, interest groups function and status of the member and the professional conduct of such member and, in general, as the Board determines to be in the best interest of the functioning of the Institute and the members as a whole.

The subcategories are:

### Corporate sector Professionals:

- a. Tax Executive (Designation: 'Tax Executive (SA)')

### Public Sector Tax Professionals:

- b. Tax Professional (Designation: 'Master Tax Professional (SA)')
  - c. Tax Professional (Designation: 'General Tax Professional (SA)')
  - d. Tax Professional (Designation: 'Customs and Excise Professional (SA)')
- 
- a. Tax Professional (Designation: 'Master Tax Professional (SA)')

### Private Sector Tax Professionals:

- b. Tax Practitioner (Designation: 'Master Tax Practitioner (SA)')
  - c. Tax Practitioner (Designation: 'General Tax Practitioner (SA)')
  - d. Tax Practitioner (Designation: 'Tax Technician (SA)')
  - e. Tax Practitioner (Designation: Customs and Excise Practitioner (SA)')
- 
- (4) The Board of directors may expand, modify or contract the abovementioned categories based on the operational requirements of the Company from time to time and further, may provide for practising licences/accreditation within the various subcategories to provide for and regulate the professional functions and practice of such members and may allocate and/or revoke and/or amend such licenses/accreditation as the Board deems fit from time to time in its sole discretion.

- (5) The terms and conditions and the qualifications for Membership, the subcategories of membership, the process for applying for Membership, any initial or periodic cost of Membership in any class, the rights and obligations, if any, of Membership in any class and the grounds on which Membership may, or will, be suspended or lost, is provided for in the Rules of the Company as amended from time to time.
- (6) Without derogating from the above, any voting member of the Institute who is in default with any of the obligations of membership imposed on him or her by virtue of the terms of this Memorandum of Incorporation and/or the rules of the company, as amended from time to time, shall automatically be regarded as a non-voting member and shall not be entitled to attend or vote at any meeting of members of the company.
- (7) The Board of directors may provide for the separation of any subcategory of members into a separate sister Institute, if the Board of directors deem such separation to be in the best interest of the subcategory of members and/or the members of the Institute in general and/or the public or, in general, to be in furtherance of the objectives of the Institute as set out in this Memorandum of Incorporation. Such separate Institute shall be created on the same or materially the same terms and conditions as set out in this Memorandum of Incorporation (as may be adapted within the context and requirements of the specific subcategory of members and rationale underlying the Board's decision) and shall remain under the continued governance and/or authority of the Company, but subject to the Company's right of delegation of such authority as it deems fit from time to time.
- (8) Each voting Member of the Company has at least one vote. *Item 1(7) of Schedule 1*
- (9) The Memorandum of Incorporation does not limit or restrict the Company to allow for Membership to be held by juristic persons, but subject to such conditions and/or limitations determined by the Board from time to time. *Item 4(c) Schedule 1*
- (10) The Memorandum of Incorporation does not restrict or regulate, or provide for any restriction or regulation of, Membership in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution. *Item 4(2) Schedule*
- (11) The Memorandum of Incorporation does not presume the Membership of any person, regard a person to be a Member, or provide for the automatic or ex officio Membership of any person, on any basis other than lifetime Membership awarded to a person for service to the Company or to the public benefit objects set out in the Company's Memorandum of Incorporation; and with that person's consent. *Item 4(2)(b)(i)(ii) Schedule 1*
- (12) In relation to the Company, and for purposes of this Memorandum of Incorporation, no person other than a Member or its authorised representatives or proxies shall be entitled to attend, speak and vote at a meeting of that class of Members. *Section 1, section 57(1)*

The Board shall on application, and against payment of the annual Membership subscription fee as and such other fees, charges and/or further conditions as the board may determine from time to time, admit to Membership any person eligible in terms hereof to be Members of the Company, whereafter the Member's name will be entered into the register of members.

Subject to the qualification set out in Section 4(b) of Schedule 1 of the Act, the Board shall be entitled in its discretion to appoint any person as a lifetime Member or honorary Member of the Company, and such Member shall not be required to pay a subscription fee.

- (13) The South African Institute of Tax Professionals (NPC) shall maintain a Member's register. *Section 24(4)(a)*

## 2.2 Members' right to be represented by proxy

- (1) At any time, a Member may appoint any individual, including an individual who is not a Member of the Company, as a proxy to participate in, and speak and vote at, a meeting of that class of Member, on behalf of the Member or give or withhold written consent on behalf of the Member to a decision to be taken by that class or by round-robin resolution, provided that the Member may not appoint more than one proxy to exercise voting rights on behalf of that Member.

The Memorandum of Incorporation hereby limits and restricts the appointment of proxies to the appointment of one proxy per voting Member in terms of section 58(3)(a).

The Member of an instrument of proxy or general Power of Attorney, given by a Member, shall be entitled to vote if duly authorised under that instrument or power to attend and take part in any meeting or proceeding of the Company, whether or not he is himself a Member in the Company.

- (2) A proxy appointment shall be in writing, dated and signed by the Member and remains valid for 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration unless it is revoked or expires earlier as contemplated in the Act.

The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the Company. The appointment is suspended at any time and to the extent that the holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote. *Section 58(2)(a)(b)(i)(ii)*

- (3) The authority of a Member's proxy to delegate the proxy's powers to another person, and to decide without direction from the Member whether to exercise or abstain from exercising any voting right of the Member, is not limited or restricted by this Memorandum of Incorporation, subject only to any restriction set out in the instrument appointing the proxy. *Section 58(3)(b)*

Unless the instrument appointing a proxy provides otherwise, a Member's proxy may decide, without direction from the Member, whether to exercise or abstain from exercising any voting right of the Member, as set out in section 58(7) of the Act, and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation. *Section 58(7)*

- (4) The South African Institute of Tax Professionals (NPC) shall not require that the proxy appointment be made irrevocable. *Section 58(8)(c)*

- (5) The South African Institute of Tax Professionals (NPC) shall be entitled to disregard a proxy form or instrument appointing a proxy, and to disregard the vote of any proxy or purported proxy, if:

(6.1) the proxy form or instrument of proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed in section 58 of the Act or is inconsistent with or contravenes this Memorandum of Incorporation; or

(6.2) the authority of the proxy has been revoked by the Member (if applicable, through its authorised representative or through its legal representative terms of section 58(4)(b) and (c). *Section 58(4)(a), (b) and (c), section 58(7)*

- (6) Any person who is a proxy or purported proxy specified in a proxy form or instrument appointing a proxy which may be disregarded, or the voting of whom may be disregarded, shall not be entitled to attend, participate in, or speak or vote at the meeting of Members in question or by way of round-robin resolution in terms of section 60 of the Act, and shall forthwith remove himself from the meeting in question at the request of the chairman of the meeting. *Section 60*

### **2.3 Record date for determining Members' rights**

- (1) The Board of the Company shall set a record date for the purpose of determining which Members are entitled to receive notice of a Members' meeting, participate in and vote at a Members' meeting, decide any matter by written consent or electronic communication, exercise pre-emptive rights, or be allotted or exercise other rights. *Section 59(1)(a)-(f)*
- (2) A record date determined by the Board may in terms of section 59(1) set the applicable record dates for the purposes of determining Member rights, in accordance with and as contemplated by section 59, including for purposes of determining that Members who are registered on a particular record date shall be entitled to:
- (2.1) receive the notice of Members' meeting (section 59(1)(a)); or
  - (2.2) participate in and vote at a Members' meeting (section 59(1)(b)); or
  - (2.3) decide any matter by round-robin resolution (section 59(1)(c)).

Each applicable record date determined by the Board:

- (2.4) shall not be earlier than the date on which the record date is determined by the Board, i.e. shall not be a "retrospective" record date (section 59(2)(a)(i));
  - (2.5) shall not be more than 10 (ten) business days before the date on which the event or action for which the date is being set, is scheduled to occur (section 59(2)(a)(ii));
  - (2.6) must be published to every Member in terms of section 59(2)(b). *Section 59(1), section 59(1)(a), (b) and (c), section 59(2)(a)(i) and (ii), section 59(2)(b)*
- (3) For the sake of clarity, in relation to each Members' meeting, and having regard to the possible sequence of events or actions, separate record dates shall be determined, and published by the Board, to determine which Members shall be entitled to:
- (3.1) receive the notice of Members' meeting;
  - (3.2) attend and vote at that Members' meeting, as it may be adjourned or postponed, receive notice of any adjourned or postponed Members' meeting, if notice is required or given; and
  - (3.3) attend and vote at the resumption of the adjourned meeting or the commencement of the postponed meeting. *Section 59*

### **2.4 Members acting other than at a meeting**

- (1) A resolution that could be voted on at a Members' meeting, other than in respect of the election of Directors, may instead be submitted by the Board for consideration to the Members entitled to exercise voting rights in relation to the resolution and voted on in writing by Members entitled to exercise voting rights in relation to

the resolution within 20 (twenty) business days after the resolution was submitted to them. *Section 60(1)(a) and (b)*

- (2) A resolution will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution at a properly constituted Members' meeting and if adopted, shall have the same effect as if it had been approved by voting at a meeting. *Section 60(2)(a) and (b)*
- (3) An election of a Director that could be conducted at a Members' meeting may instead be conducted by written polling of all of the Members entitled to exercise voting rights in relation to the election of that Director. *Section 60(3)*
- (4) In addition to a resolution passed in terms of this clause, a resolution in writing signed by all the Members entitled to vote thereon shall be as valid and effectual as if adopted at a duly convened Members' meeting.

Within 10 (ten) business days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this clause, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be. *Section 60(1)(a)(b), section 60(4)*

## **2.5 Members' meetings**

### General:

- (1) In terms of the Memorandum of Incorporation, the Board of the Company may call a Member's Meeting at any time. *Section 61(1)(2)*
- (2) Notice of Members' meetings shall be sent to each Member entitled to vote at such meeting and who has elected to receive such notice.
- (3) Except at any time when there is only one Member or when a resolution may be passed otherwise than at a meeting of Members, the Company shall hold a Members' meeting:
  - (3.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members entitled to vote for a decision;
  - (3.2) whenever the number of Directors fall below the minimum number prescribed in the Act and the Company is required to fill a vacancy on the Board.
  - (3.3) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
  - (3.4) whenever required in terms of the Act to fill a vacancy on the Board;
  - (3.5) when demanded by Members in terms of the Act;
  - (3.6) when required by any other provision of this Memorandum of Incorporation. *Section 61(2)(a) and (b)*

- (4) This Memorandum of Incorporation does not provide a different period of notice of Members' meetings to the period prescribed by the Act and this does not prejudice the Company rights to call a meeting on less notice pursuant to section 62(2A) of the Act. *Section 62(1) and (2)*
- (5) The South African Institute of Tax Professionals (NPC) shall, as determined by the Board either hold a Members' meeting in order to consider one or more resolutions, or as regards such resolution(s) that could be voted on at a Members' meeting, other than an Annual General Meeting, instead require them to be dealt with by round robin resolution of Members entitled to vote. Within 10 (ten) business days after the Members entitled to vote by round robin resolution, the Company must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the round robin resolution. *Section 61*
- (6) The Board or any Director of the Company authorised by the Board to do so may call a meeting of Members at any time and must do so if and when required by the Companies Act or this Memorandum of Incorporation to do so. The Board must call a meeting of Members demanded by Members in terms of section 61(3). If there are no Directors or all of the Directors of the Company are incapacitated, the Company hereby authorises any Member of the Company to call a Members' meeting for purposes of and in the circumstances contemplated in section 61(11). *Section 61(1), (2), (3) and (11)*
- (7) The Board of the Company or any Member or any other person specified in the Company's Memorandum of Incorporation or Company Rules, shall call a Members' meeting if one or more written and signed demands for such a meeting are delivered to the Company and each such demand describes the specific purpose for which the meeting is proposed and in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting, in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands. *Section 61(3)(a)(b), section 61(4)*
- (8) At any time before the start of a Members' meeting a Member who submitted a demand for that meeting may withdraw that demand and the Company shall cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continue to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting. *Section 61(6)(a-b)*
- (9) In the event of a demand for a meeting being withdrawn, the Board of directors may refer the matter to the disciplinary committee of the Institute to determine whether the demand for a meeting was made and/or withdrawn on a reckless and/or frivolous basis. In the event that the disciplinary committee may find that the demand for a meeting and/or the withdrawal thereof was made on a reckless and/or frivolous basis, the disciplinary committee may direct that the member pay to the Company the entirety, or such portion as the disciplinary committee deem fit, of the wasted costs incurred by the Company as a result of the demand for and/or withdrawal of demand for a meeting.
- (10) The authority of either the Board to determine the location of any Members meeting, and to hold any such meeting is not limited or restricted by this Memorandum of Incorporation. *Section 61(9)(a)(b)*
- (11) With respect to the location(s) and venue(s) of a Members' meeting, the Board may determine that a meeting will take place at several locations and venues and may determine such arrangements as it in its sole discretion deem appropriate and practical in any circumstances to address the location and venue where the Chairman of the meeting will preside ("the main meeting place") the numbers of persons attending at any particular location or venue, the safety of persons attending at any particular location or venue, the facilitating

factors of attendance of persons at any particular location or venue, the entitlement of persons to attend at any particular location or venue, and the electronic participation of persons in the meeting, and may from time to time vary any such arrangements. A Member who in person or as represented attends a Members' meeting physically at any of the various locations and venues for a meeting shall be deemed to be present at the meeting in question, and counted towards the quorum, while so attending. *Section 62(9)*

- (12) The South African Institute of Tax Professionals (NPC) is not required to hold any Members' meetings other than those specifically required by the Act.
- (13) The Chairman of the Board or in his absence, the lead independent non-executive Director, shall preside as Chairman at every Members' meeting. If there is no such Chairman, or if at any Members' meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Members' meeting or is unwilling to act as Chairman, the Members entitled to vote which are present shall select a Director present at the Members' meeting, or if no Director be present at the Members' meeting, or if all the Directors present decline to take the chair, the Members entitled to vote shall select one of their number which is present to be Chairman of the Members' meeting.
- (14) Notwithstanding anything to the contrary contained in the Act or this Memorandum of Incorporation, all Members' meetings that are called for may be held in person.
- (15) Any failure to hold a meeting does not affect the existence of the Company, or the validity of any action by the Company. *Section 61(14)*

#### Closed Meetings:

- (16) Without derogating from the generality of the above, the Board of the Company may call a Member's Meeting with regard to a specific subcategory of members, at any time, in order to discuss and obtain the direction of such members with regards to issues that are specifically of import to such subcategory.
- (17) The result of such meeting shall only be applicable to and bind the relevant subcategory of members and shall not be made applicable to the members of the Institute at large without first having been put to the vote at a duly constituted meeting of all the members of the Company.

## **2.6 Notices**

- (1) Each Member shall notify the Company in writing of at least an electronic mail address plus a fax number, and a physical or postal address, each of which shall be deemed to be the Members' registered address within the meaning of the Memorandum of Incorporation for purposes of any communication with the member, delivery of notices and publication of any information required in terms of this Memorandum of Incorporation and/or the Act. If the Member has not notified the Company of at least the electronic mail address as referred to above, the Member shall be deemed to have waived his right to be served with any notice of the Company. Electronic (e-mail) communication shall be the preferred method of communication with members.

## **2.7 Notice of Members' meetings**

- (1) In terms of the Act and the Memorandum of Incorporation a notice of a meeting of any class of Members must be delivered contemporaneously to each Member registered as such as of the applicable record date for delivery of that notice, determined in terms of the record date, read with section 59(1)(a) of the Act, of the class of Member entitled to vote on any of the resolutions to be considered at the meeting, and to the Auditors for the time being of the Company in terms of section 93(1)(c)(ii) of the Act, in form and content as prescribed in section 62(3), at least 10 (ten) business days before the date on which the meeting is to begin. Any failure

to comply with this clause shall not affect the validity of the General Meeting. *Section 58(6), section 59(1)(a), section 62(1)(a)(b) and section 93(1)(c)*

- (2) The South African Institute of Tax Professionals (NPC) may call a meeting with less notice than required by this Memorandum of Incorporation, but such a meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to waive the required minimum notice of the meeting. *Section 62(2A)*
- (3) A notice of a Members' meeting shall be in writing in plain language and shall include:
  - (3.1) the date, time and place for the meeting, and the record date for the meeting;
  - (3.2) the general purpose of the meeting, and any specific purpose if applicable:
    - (3.2.1) a summarised form of the financial statements to be presented and directions for obtaining a copy of the complete financial statements for the preceding financial year;
    - (3.2.2) a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that Resolution to be adopted;
  - (3.3) a reasonably prominent statement that:
    - (3.3.1) a Member entitled to attend and vote at the Members' meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by round-robin resolution of the relevant holders entitled to vote;
    - (3.3.2) a proxy need not be a Member entitled to vote; and
    - (3.3.3) participants in a Members' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Members' Meeting. *Section 62(3)(a - e)*
- (4) The notice of a meeting or of an adjourned meeting:
  - (4.1) must inform Members of the availability of participation in the meeting and of participation in any postponement or adjournment of the meeting by electronic communication and must provide the necessary information to enable Members or their proxy or proxies to access the available medium or means of electronic communication for the meeting and for any postponement or adjournment thereof in terms of section 63(3)(a) of the Act;
  - (4.2) should, for the sake of clarity, specify the record date determining which Members are entitled to receive the notice of the meeting (section 59(1)(a) and 59(2)(b) of the Act);
  - (4.3) must comply with the requirements set out in section 62(3) as to formalities and content, including specifying the record date for determining which Members are entitled to attend, participate in and vote at the meeting (section 59(1)(b) and 59(3)(b) of the Act);
  - (4.4) must specify whether any proposed resolution is to be voted on by polling and

- (4.5) should, for the sake of clarity, specify the applicable record dates which would be applicable in terms of section 59(1)(a) and (b) of the Act should the meeting be postponed or adjourned.

## 2.8 Conduct of meetings

- (1) In terms of the Act and this Memorandum of Incorporation, a person wishing to attend or speak at or participate in or vote at a Members' meeting as a Member personally or as an authorised representative or as a proxy for a Member, or as the legal representative of a Member, or as the Auditors or representative of the Auditors, must for purposes of identification present reasonably satisfactory identification and evidence of their authority or entitlement to represent the Member in question or to attend the meeting, to the Chairman of the meeting at least 30 (thirty) minutes before the appointed time for that meeting to begin or, if the meeting is adjourned, at least 30 (thirty) minutes before the appointed time for that adjourned meeting to resume, as the case may be, stipulated in the notice of the meeting or adjourned meeting in question.

The auditors for the time being of the Company shall be entitled to attend any Members' meeting and be heard on any part of the business of the meeting that concerns the Auditor's duties or functions. *Section 63(1)(a), section 93(1)(c)(i) and (iii)*

In terms of the Act and the Memorandum of Incorporation the Company has the authority to conduct a Members' Meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication of one or more Members, or proxies for Members, in all or part of a Members' Meeting, as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting.

Members (or if applicable their representatives or proxies) may participate in all or part of a meeting (including the meeting as adjourned) which they are entitled to attend, by electronic communication, at their own expense.

The electronic communication employed by the Company must ordinarily enable all participants in the meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

A resolution adopted by Members, some or all of whom were connected electronically, where:

- (2.1) Members connected electronically remained connected for the duration of that part of the meeting during which the resolution was discussed; and
- (2.2) the subject matter of the resolution has been discussed; and
- (2.3) the Chairman of the meeting or any other person present in person or electronically at the meeting certifies in writing that the aforementioned requirements have been met;

shall be deemed to have been passed on the date on which the resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a resolution at a meeting or where some or all of the Members were connected and participated electronically, the Company shall:

- (2.4) deliver to each Member a copy of the resolution proposed, accompanied by a statement describing the results of the vote, consent process or election, as the case may be; and

(2.5) insert a copy of the said resolution and statement in the minute book of the Company.

A Member who in person or as represented participates in a meeting at any time electronically in terms of this article shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating. *Section 60(4), section 61(10), section 63(2)(a)(b), section 63(2)(b)*

(2) In the event that the Company provides for participation in a meeting by electronic communication, as set out in clause 2 of this sub-article, the notice of that meeting shall inform Members of the availability of that form of participation and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication, and access to the medium or means of electronic communication is at the expense of the Members or proxy. *Section 63(3)(a) and (b)*

## **2.9 Meeting Quorum and Postponement**

(1) In terms of the Act, this Memorandum of Incorporation specifies that at least 5% (five percent) of all the voting rights that are entitled to be exercised in respect of:

(1.1) at least one matter to be decided at any Members' meeting must be present for that meeting to begin; and

(1.2) at least three Members entitled to attend and vote are present (in person, by proxy or electronically) at the time of the meeting.

After a quorum has been established for a Members' meeting, or for a matter to be considered at a Members' meeting, the Members' meeting may continue, or the matter may be considered, so long as all the Members' for such quorum are present at the Members' meeting.

The quorum shall be sufficient persons present at the Members' meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the Members' meeting.

## **2.10 Adjournment of Members' meetings**

(1) In terms of the Act and the Memorandum of Incorporation an adjournment of a meeting, or of consideration of a matter being debated at the meeting shall be either to a fixed time and place, or until further notice, as agreed at the meeting and requires that a further notice be given to Members only if the meeting determined that the adjournment was until further notice.

The South African Institute of Tax Professionals (NPC) shall not be required to give further notice of a meeting that is postponed or adjourned unless:

(1.1) the location for the meeting is different from:

(1.1.1) the location of the postponed or adjourned meeting (section 64(7)(a) of the Act); or

(1.1.2) the location announced at the time of adjournment, in the case of an adjourned meeting (section 64(7)(b) of the Act); or

- (1.2) it is necessary to inform registered Members of the availability of participation in the postponed or adjourned meeting by electronic means; or
  - (1.3) the meeting has been adjourned “until further notice” in terms of this Article of the Memorandum of Incorporation. *Section 64(7)(a)(b) and section 64(11)*
- (2) In terms of the Act and this Memorandum of Incorporation the quorum at any adjourned meeting shall be the Members present thereat personally or by proxy, who may transact the business for which the meeting was called.
- If at any adjourned meeting a quorum is not present within 30 (thirty) minutes from the appointed time for such meeting to commence, the Members who are present or represented by proxy and entitled to vote shall constitute a quorum and may proceed to transact the business of the meeting.
- (3) No business shall be transacted at any adjourned Members’ meeting of the Company other than business left unfinished at the meeting from which the adjournment took place.
  - (4) After a quorum has been established for a meeting or for a matter to be considered at a meeting, the meeting may continue or the matter may be considered, so long as at least one Member with voting rights entitled to be exercised at the meeting, or on that matter, is present or presented at the meeting. *Section 64(9)*

## **2.11 Votes of Members**

- (1) In terms of the Act and the Memorandum of Incorporation, subject to any special rights or restrictions as to voting by or in accordance with the Memorandum of Incorporation, at a meeting of the Company:
  - (1.1) every person present, either personally or by proxy, and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
  - (1.2) on a poll any person who is present at the meeting, whether as a Member or as a proxy for a Member, has the number of votes determined in accordance with voting rights held by that Member; and
  - (1.3) voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Members if a demand is made for such a vote by:
    - (1.3.1) at least 2 (two) persons having the right vote on that matter, either as Members or as proxies representing Members; or
    - (1.3.2) a Member who is, or Members who together are, entitled, as Members or proxies representing Members to exercise at least 5% (five percent) of the voting rights entitled to be voted on that matter; or
    - (1.3.3) the Chairman of the meeting.

At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of this clause, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the

Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such Resolution. The demand for a poll may be withdrawn.

If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Member is entitled.

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

- (2) The passing of an Ordinary Resolution is to be subject to the approval of more than 50% (eg. 50.1% or more) of the vote cast by all Members present in person or represented by proxy, at the General Meeting convened to approve such Resolution and shall be subject to a minimum notice period of 10 (ten) business days.
- (3) The passing of a Special Resolution is to be subject to the approval of at least 65% (sixty five per cent) of the votes cast by all Members present in person, or represented by proxy, at the General Meeting or the Annual General Meeting convened to approve such resolution and shall be subject to a minimum notice period of 10 (ten) business days.
- (4) A Special Resolution adopted at a Members' Meeting is not required for a matter to be determined by the Company, except those matters set out in section 65(11), or elsewhere in either the Act or the Memorandum of Incorporation. *Section 65(11), section 65(12)*
- (5) In terms of this Act and the Memorandum of Incorporation, Round Robin Resolutions of Members entitled to vote will be passed if signed by Members entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members' meeting.

If a Member entitled to vote is a Body Corporate, represented at any Members' meeting it shall have only 1 (one) vote. A proxy shall only 1 (one) vote on a show of hands.

Within 10 (ten) business days after the adoption or failing of a round-robin resolution, the Company shall:

- (6.1) deliver to each Member a copy of the resolution proposed, accompanied, by a statement describing the results of the vote, consent process or election, as the case may be, (section 60(4)); and
- (6.2) insert a copy of the resolution and statement referred to in the minute book of the Company.

Every resolution of Members is either:

- (6.3) an ordinary resolution in terms of the Companies Act ([section 65(1)]); or
- (6.4) a special resolution in terms of the Companies Act, as required in terms of the Companies act or as required in terms of this Memorandum of Incorporation (section 65(1) read with section 65(9), (11) and (12)); or

- (6.5) the Board may propose any resolution to be considered by Members and may determine whether that resolution will be considered and voted on at a meeting of Members or by Round Robin Resolution ([Section 65(2)])

Any 2 (two) or more Members may by notice to the Board require the Board to propose a resolution concerning a matter in respect of which such Members are each entitled to exercise voting rights, and when proposing the resolution may require to Board to determine that the resolution be submitted to Members for consideration at a meeting of Members called, or at the next scheduled Members' meeting, or by round-robin resolution. (Section 65(3))

Any resolution proposed must comply with the requirements as to form and content, and supporting information or explanatory material, specified in [section 65(4)]

The South African Institute of Tax Professionals (NPC) is not obliged to file with the Commission any Members' resolution (including any special resolution), except if required to do so in terms of the Companies Act and the Board may decide whether the Company is obliged to file with the Commission any Members Resolution. *Section 65(11), section 59(1)(c), section 60(1)(a), section 60(1)(b), section 60(2), section 60(3), section 60(4), section 60(5), section 65(1), section 65(2), section 65(3), section 65(4), section 65(9), section 65(11), section 65(12)*

## 2.12 General Meetings

- (1) Except at any time when there is only one Member or when a Resolution may be passed, otherwise, than at a meeting of Members, the Company shall hold a Members' meeting:
- (1.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
  - (1.2) whenever required in terms of the Act to fill a vacancy on the Board;
  - (1.3) when demanded by Members in terms of the Act; or
  - (1.4) when required by any other provision of this Memorandum of Incorporation *Section 61(2)(a)(b)*
- (2) In the event that the Company elects to hold a Members' meeting, the business of the Members' Meeting shall be to receive and consider the following:
- (2.1) the presentation of the Directors' report;
  - (2.2) the election of Directors to the extent required by section 66(4)(b) of the Act or the Memorandum of Incorporation;
  - (2.3) the presentation of a summarised form of Audited Annual Financial Statements, for the immediate preceding financial year of the Company and directions for obtaining a copy of the complete Financial Statements for the preceding financial year of the Company;
  - (2.4) the presentation of the Audit Committee report if so required by the Act or the Memorandum of Incorporation;
  - (2.5) the appointment of an auditors for the ensuing financial year;
  - (2.6) the appointment of an Audit Committee for the ensuing financial year;

- (2.7) the appointment of a Social and Ethics Committee for the ensuing financial year;
  - (2.8) the presentation of the Social and Ethics Committee report;
  - (2.9) the election of other officers of the Company in the place of those retiring by rotation or otherwise;
  - (2.10) any other matter or business determined by the Board;
  - (2.11) any matters raised by Members, with advance notice to the Company;
  - (2.12) any other business which ought to be transacted at an Annual General Meeting, and any business which is brought under consideration by the reports of the Board laid before such meeting;
  - (2.13) all other business transacted at the Annual General Meeting and all business transacted at any other Members' meeting shall be deemed special.
- (3) At least 10 (ten) business days before the date of the Members' Meeting, a copy of the Annual Financial Statements of the Company shall be delivered to all Members, save for any Member who waives his right to receive such statements.

### **2.13 Termination of Membership**

- (1) The membership of a Member shall terminate if:
- (1.1) the Member resigns by giving 30 (thirty) days written notice to the Company;
  - (1.2) the Member, being a natural person, dies or his estate is surrendered or sequestrated in terms of the Insolvency Act 1936 as amended;
  - (1.3) the Board of Directors may suspend the membership of a person if the board is satisfied that the that the Member's continuous behaviour, whether in public or as a professional, is regarded as being damaging to the Company's and/or it's member's image and reputation. The Board shall immediately refer the matter to the company's disciplinary structure for urgent consideration and representation from the member concerned as to the suspension of the member's membership. The committee may uplift or confirm the suspension with or without such further conditions as the committee may determine together with referral of any complaint against the member to be heard in the normal course the disciplinary process of the company.
  - (1.4) If termination of membership is indicated in terms of the Company's disciplinary process as a result of professional misconduct and/or non-compliance with the code of conduct and obligations of membership of the Company and so decided by the independently established disciplinary structure: the Taxation Disciplinary Board.
  - (1.5) If the member exceeds the total number of demerit points per cycle as determined by the Board of directors from time to time with regard to minor infringements of the code of conduct and obligations of membership of the Company.
  - (1.6) the Member fails to pay the Membership subscription fee or any other levy or penalty including, but not limited to, any charges for goods and/or services provided to the member, on or before the date on which it is due, provided that the Board may in its discretion reinstate any Member who makes payment of any arrears due within a period of 3 (three) months after the date on which it is due.

- (1.7) in case of a Member being a Company or Close Corporation, it is finally wound up or deregistered in terms of the Companies, or Close Corporations legislation in place from time to time.

### ARTICLE 3 – BOARD, DIRECTORS AND PRESCRIBED OFFICERS

#### 3.1 Election and appointment

- (1) The Company subscribes to the principles of good corporate governance as set out in the King Reports from time to time. As such, the Board of directors shall cause a Nominations Committee to be established.
- (2) The Nominations Committee shall from time to time determine the rotation of directors and the qualifying criteria for any candidate to be nominated as a director in terms of the provisions set out below. The determination shall be in the sole discretion of the Nomination Committee taking into account factors such as, but not necessarily limited to, the Company's short and long term strategy, operational requirements and the professional requirements of members.
- (3) Subject to the determination of candidates by the Nominations Committee, the Board shall be comprised of no less than 9 (nine) directors to be selected, elected and appointed as follows:
- a. 1 (one) seat to be elected by members from nominees employed in Large International Professional Services Firms (KPMG, Deloitte, PWC, Ernst & Young). At least 3 candidates shall be so nominated.
  - b. 1 (one) seat to be elected by members from nominees employed in Medium International Professional Services Firms (BDO, Mazars, Grant Thornton). At least 3 candidates shall be so nominated.
  - c. 1 (one) seat to be elected by members from nominees employed in Large International Legal Firms (ENS, Werksmans, Cliff Decker, Bowman Gilfillian). At least 3 candidates shall be so nominated.
  - d. 1 (one) seat to be elected by members employed in academia and is Tax Educators. At least 3 candidates shall be so nominated.
  - e. 1 (one) seat to be elected by members from nominees employed in the Public Sector. At least 3 candidates shall be so nominated.
  - f. 1 (one) seat to be elected by members from nominees employed in the sector of Commerce and Industry. At least 3 candidates shall be so nominated.
  - g. 1 (one) seat reserved for the chairman of the National Chairpersons Committee, comprising the National Nine Provinces and Geographical Regions of the Republic of South Africa.
  - h. 1 (one) seat reserved for an independent director, who is not a member.
  - i. 1 (one) seat reserved for the Chief Executive of Secretariat.
- (4) The nominations of the above-mentioned groups shall be made to the Nominations Committee established with the terms of reference under the best practice from time-to-time and good governance practices as stipulated under King III.

- (5) In the event that a grouping may fail to nominate the required candidates or the required minimum number of candidates, the Board shall have the discretion, but not the obligation, to co-opt a director from such constituency to fill such vacancy.
- (6) In the event that the number of Directors of the Company together with any ex officio Directors, is fewer than the minimum number of Directors required for the Company in terms of the Act, or the Company's Memorandum of Incorporation, the Board shall call a Members' meeting within 40 (forty) business days after incorporation of the Company for the purpose of electing sufficient Directors to fill all vacancies on the Board at the time of the election. Section 67(2)
- (7) A person becomes entitled to serve as a Director of this Company when that person –
- (2.1) Is a member of the Company in good standing.
  - (2.2) has been elected by members in meeting, or holds office, title, designation or similar status, entitling that person to be an ex officio Director of the Company or has been assumed or nominated by the Board of directors and
  - (2.3) has delivered to the Company a written consent to serve as its Director. *Section 66(7)(a)(b). Section 44(b) Act 3 of 2011*
- (8) Any particular Director may be elected to more than one committee of the Company and when calculating the minimum number of Directors required for this Company, being not less than 3 (three) Directors, a Director who has been elected to more than one committee must be counted only once. *Section 66(12)*
- (9) At least 90 days before the date of the annual general meeting at which the directors are to be elected, the Company shall give the voting members written notice calling on them to nominate candidates for appointment to the Board as per the determination of the Nominations Committee.
- (10) Each voting member may nominate an unlimited number of candidates, provided that such nominations are submitted to the Board at least 30 business days before the annual general meeting and that each candidate signifies his or her acceptance of the nomination in writing on the nomination form delivered to the Company. Any nomination which is not accepted by the candidate in this manner shall be disregarded.
- (11) Retiring directors may be re-elected to office for one additional term whereafter the director shall be subject to a 1 (one) year 'cooling off' period before he may again stand for election.
- (12) The election of the Board shall take place in the same manner as the voting for an Ordinary Resolution, to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and in each vote to fill a vacancy where each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate. *Section 66(2)(a),(b), (i), (ii)*
- (13) The Board shall from time to time, but in any event no less than once every three years, consider the criteria for membership to any of the constituencies set out in paragraphs 3.1(3)(a), 3.1(3)(b) and 3.1(3)(c) above, the status of the firms comprising the constituencies at the time and may, in their sole and unfettered discretion add to, or remove a firm from any of the constituencies.

### **3.2 Rotation and appointment of Ex Officio, Non-Executive and Alternate Directors**

- (14) As an interim transitional measure, the current directors of the Company shall remain in office and complete their terms which expire in 2015.
- (15) The list of eligible nominees and further directors, and the rotation of directors, shall be determined by Nominations Committee from time to time.
- (16) All elected and appointed directors on the board shall retire from office no later than the third annual general meeting after their election and newly elected members of the board shall assume their office as directors at that meeting.
- (17) The directors elected to the Board at the annual general meeting may fill any vacancies remaining on the board after the annual general meeting, by appointing such non-executive directors to those vacancies as soon as possible after the general meeting.
- (18) The board may appoint a chief executive officer who will be an *ex officio* director on the board.
- (19) A person who holds office or acts in the capacity of an *ex officio* Director of a company (if applicable) has all the
- (4.1) powers and functions of any other Director of the Company, except to the extent that the Company's Memorandum of Incorporation restricts the powers and functions or duties of an *ex officio* Director, and
  - (4.2) duties, and is subject to all of the liabilities, of any other Director of the Company. *Section 66(5)(b)(i)(ii)*
- (20) The Board may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the vacancy has been filled by election in terms of this Memorandum of Incorporation. During that period, any person so appointed has all the powers, functions and duties and is subject to all of the liabilities of any other Director of the Company. *Section 68(3)*
- (21) A person elected or appointed as an alternate for a Director acts for all intents and purposes in the place of, and not for or as a representative of, the Director for whom he is an alternate, and shall be treated as a Director of the Company while he acts in the place of the Director for whom he is an alternate.

While acting in the place of the Director for whom he is an alternate, the alternate Director may generally exercise all the rights of that Director and shall, in all aspects, be subject to the terms and conditions existing with reference to the appointment, rights and duties as Director and the holding of office of that Director, and shall not have any claim of any nature whatsoever against the Company for any remuneration with respect to his services as a Director or his appointment as an alternate.

A person may be elected or appointed as an alternate for one or more Directors. *Section 66(4)(b)*

- (22) An alternate shall only be entitled to vote at any meeting if the Director for whom he is an alternate is not present at that meeting, provided that the alternate may also attend a meeting at which the Director for whom he is an alternate is present if the other Directors present at the meeting resolve that he may attend, provided further, that in the circumstances when the Director for whom he is an alternate is present, then the alternate shall not be counted towards a quorum and shall recuse himself from the meeting if requested by any Director to do so.

An alternate shall only be entitled to sign a round robin resolution if the Director for whom he is an alternate is then absent from the Republic of South Africa or is out of reach of communication or is incapacitated.

(23) The appointment of an alternate shall cease, and he shall vacate his office as an alternate, if:

- (19.1) the alternate was appointed by the Board and the Board gives notice to that alternate terminating his appointment;
- (19.2) the person (for whom another person has been elected or appointed as an alternate) ceases to be a Director of the Company or ceases to be entitled to serve as a Director, for any reason; or
- (19.3) an event occurs or circumstances arise, in relation to an alternate, which if he were a full Director would cause him to cease to be entitled to serve as a Director in terms of the Companies Act or this Memorandum of Incorporation. *Section 66(4)(b)*

### **3.3 Governance of the Board**

- (1) In terms of the Act and this Memorandum of Incorporation the business and affairs of the Company shall be managed by or under the direction of its Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1) except to the extent that the Act and this Memorandum of Incorporation provides otherwise. The Directors may from time to time, at their discretion, raise or borrow or secure the payment of any sum or sums of money for the purposes of the Company. *Section 66(1)*
- (2) The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation including the right of sub-delegation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any Company, the Members, Directors, Nominees or Managers of any Company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such Power of Attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

### **3.4 Vacancies on Board**

- (1) In terms of this Memorandum of Incorporation, a person shall cease to be a Director and a vacancy arises on the Board of the Company:
  - (1.1) when the person's term of office as Director expires, or
  - (1.2) in any case, if the person:
    - (1.2.1) resigns or dies;
    - (1.2.2) in the case of an ex officio Director, ceases to hold the office, title, designation or similar status that entitled the person to be an ex officio Director;
    - (1.2.3) becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time subject to section 71(3);

(1.2.4) is declared delinquent by a court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company in terms of section 162;

(1.2.5) becomes ineligible or disqualified in terms of section 69 subject to section 71(3);

(1.2.6) Is no longer a member of the Company or loses his status of being "in good standing";

(1.2.7) Retires or moves from his nominated constituency; or

(1.2.8) is removed:

(1.2.6.1) by resolution of the members in terms of section 71(1);

(1.2.6.2) by resolution of the Board in terms of section 71(3); or

(1.2.6.3) by order of the court in terms of section 71(5) or (6). *Section 70(1)(a), (b), (i-vi)*

(2) Any person who is the audit partner of an audit firm who fulfils the duties of an external auditor of the company shall not be eligible to be a nominated and elected as a director of the company for the duration while the firm holds such appointment.

(3) If a vacancy arises on the Board, the Board may in terms of section 68(3) elect a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on temporary basis until the earlier of the vacancy being filled by election by the Ordinary Members in terms of section 68(2) or the conclusion of the next General Meeting of the Company after the temporary filling.

If a vacancy arises on the Board and as a result thereof, the Company does not have the minimum number of Directors required by the Act or the Memorandum of incorporation, the Board shall within the period of 3 (three) months from the date such a vacancy arose, continue to function in terms of section 66(11) and shall fill the vacancy on a temporary basis as provided for above or convene a General Meeting or propose a Round-Robin Resolution for the purposes of the Ordinary Members conducting an election to fill such vacancy in terms of section 68(2).

After the expiry of the 3 (three) month period, the remaining Directors on the Board shall only be permitted to act for the purposes of filling the vacancy or calling a General Meeting of Ordinary Members or proposing a round-robin resolution for purposes of an election in terms of section 68(2)

If at any time the number of Directors falls below the number required as a quorum the continuing Directors may act for the purpose of appointing sufficient Directors to constitute a quorum or for convening a General Meeting but for no other purpose.

### **3.5 Removal of Directors**

(1) In terms of section 71(1) any Director may be removed by an Ordinary Resolution adopted at a Members' Meeting, despite anything to the contrary in the Memorandum of Incorporation, or any agreement between the Company and that Director, or between any Members and that Director as follows:

(1.1) before the Members of a Company consider the above resolution:

- (1.1.1) the Director concerned must be given notice of the meeting and the resolution. The notice must be equivalent to that which a Member is entitled to receive, irrespective of whether or not the Director is a Member of the Company; and
  - (1.1.2) the Director must be afforded a reasonable opportunity to make a presentation to the meeting either in person or through a representative before the resolution is put to a vote.  
*Section 71(1) and section 71(1)(2)(a)(b)*
- (2) The South African Institute of Tax Professionals (NPC) has at least 9 (nine) Directors, and if a Member or a Director contends that a person should be removed as a Director of the Company by the Board on any of the following grounds set out in section 71(3)
- (2.1) has become;
    - (2.1.1) ineligible or disqualified in terms of section 69; or
    - (2.1.2) incapacitated to the extent that the Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time
  - (2.2) or has neglected or been derelict in the performance of the functions of a Director,
- that Member or Director shall first submit to the Board each of its contentions and the specific grounds of each such allegation and shall submit to the Board all evidence available on which the Member or Director relies for making the contention and allegation. On receipt thereof the Board must study such submission, investigate the allegation and determine the matter by Resolution in accordance with and subject to the procedures and its power to do so as set out in section 71(3) to (10).
- (3) The Memorandum of Incorporation prohibits the removal of a Director by round-robin resolution of Members in terms of section 60 or Directors acting other than at a meeting in terms of section 74 where a decision may be adopted by written consent of the majority, given either in person or by electronic communication, since the Director concerned must be afforded a reasonable opportunity to make a presentation at a Board meeting, in person or through a representative, before the resolution to remove him is put to a vote. *Section 71*
- (4) A Director shall be entitled to resign as Director on 30 (thirty) days' written notice to the Company or on such shorter notice as the Board may determine.

### **3.6 Board Committees**

- (1) In terms of the Act and the Memorandum of Incorporation, the Memorandum of Incorporation does not limit, restrict or qualify the authority of the Board to appoint any number of committees; or to delegate to any such committee any of the authority of the Board.

Except to the extent that the Board or a Member Resolution establishing a committee provides otherwise, the Members of the committee:

- (1.1) may include persons who are not Directors of the Company but any such persons must not be ineligible or disqualified to be a Director in terms of section 69 of the Act;
- (1.2) may consult with or receive advice from any person;

- (1.3) may be remunerated for their services as such; and
- (1.4) provided that the Committee is duly constituted, have the full authority of the Board in respect of any matter referred to it. *Section 72(1)(a)(b) and section 72(2)(a)(b)*
- (2) The Members of each Board committee shall hold and conduct their meetings in accordance with the provisions of the board and Board Committees Charter and the Rules of the Company governing the holding and conduct of such meeting, which provisions are binding on each board committee member in terms of section 15(6)(c)(ii). Any board committee formed shall conform to any regulations that may from time to time be imposed upon it by the Board, provided that the meetings and proceedings of any Board committee consisting of two or more members shall be governed by the provisions contained in this Memorandum of Incorporation regulating the meetings and proceedings of the Board, so far as the same are applicable thereto, and are not superseded by any regulation made by the Board.
- (3) If the Company has in any 2 (two) of the previous 5 (five) years, scored above 500 (five hundred) points in terms of its Public Interest Score, the Company shall appoint a Social and Ethics Committee, unless it is a subsidiary of another Company that has a Social and Ethics Committee and the Social and Ethics Committee of that other Company will perform the functions required by this regulation on behalf of that subsidiary Company; or it has been exempted by the Tribunal. *Regulation 43(2)(a)(b)*
- (4) If and for as long as it is required to do so in terms of the Act or the Regulations and unless the Company is exempted from doing so by the Tribunal, in terms of section 72(5) of the Act, the Board shall appoint a Social and Ethics Committee having the powers and functions prescribed in terms of section 72(4) of the Act and Regulation 43(2), which committee shall comprise not less than 3 (three) Directors or Prescribed Officers of the Company, at least 1 (one) of whom must be a Director who is not involved in the day to day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years. (Regulations 43(2) and (4)). *Section 15(6)(c)(ii), section 72(1), section 72(2)(a)(i)(ii), section 72(2)(b)(c), section 72(4), Regulation 43(2) and Regulations 43(4)*
- (5) The Company shall appoint the first Members of the Committee within 12 (twelve) months after the effective date of this Memorandum of Incorporation. *Regulation 43(3)(i) and (ii)*
- (6) The Social and Ethics Committee is entitled to:
- (6.1) require from any Director or Prescribed Officer of the Company any information or explanation necessary for the performance of the Committee's functions;
- (6.2) request from any employee of the Company any information or explanation necessary for the performance of the Committee's functions;
- (6.3) attend any Members' meeting;
- (6.4) receive all notices of and other communications relating to any Members' Meeting; and
- (6.5) be heard at any Members' Meeting on any part of the business of the meeting that concerns the Committee's functions. *Section 72(8)(a-e)*

The South African Institute of Tax Professionals (NPC) shall pay all the expenses reasonably incurred by its Social and Ethics Committee including, if the Social and Ethics Committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the Social and Ethics Committee in the performance of its functions. *Section 72(9)*

- (7) The Board shall have the power to appoint, and at its discretion to remove or suspend, Board Committees and to fix and vary their remuneration; to establish and keep registered offices and branch registers in any foreign country whatsoever and to close same at its discretion; and to appoint and remove agents who represent the Company for such purposes as the Board may determine. The Board shall have the power to, at any time and from time to time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes of this item with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board in terms of the Act and this Memorandum of Incorporation) for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment, may if the Board thinks fit, be made in favour of any company, or of the members, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board. Any such Power of Attorney may contain provisions for the protection or convenience of persons dealing with such attorneys as the Board thinks fit. Any such delegates as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it. *Section 72(1)(a)*

### **3.7 Board Meetings**

- (1) A Director authorised by the Board of the Company may call a meeting of the Board at any time, and shall call such a meeting if required to do so by at least 25% (twenty five percent) of the Directors where the Board has 12 (twelve) Members or more, or 2 (two) Directors in any other case. In the absence of a specifically authorised director, the meeting shall be called by the Chairman of the Board who presided at the last meeting of directors. *Section 73(1)(a)(b)*
- (2) The Director(s) of the Company convening a Board meeting may determine the location of the meeting, including the location of a meeting which has been adjourned, provided that the location shall be registered office of the Company or a suitable venue within a 20 (twenty) km radius of the registered office of the Company or a suitable venue in the Republic of South Africa which is reasonably accessible to each Director.
- (3) In terms of the Act and the Memorandum of Incorporation, the authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, is not limited or restricted by the Memorandum of Incorporation.

The electronic communication facility employed by the Company must ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting. *Section 73(3)*

A resolution adopted by Directors, some or all of whom were connected electronically, where:

- (3.1) Directors connected electronically remained connected for the duration of that part of the meeting when the resolution was discussed;
- (3.2) the subject matter of the resolution has been discussed; and
- (3.3) the Chairman of the meeting or any other Director present in person or electronically certifies in writing that the aforementioned requirements have been met,

shall be deemed to have been passed on the date on which the resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a resolution at a meeting or where some or all of the Directors were connected and participated electronically in terms of this clause the Company shall:

(3.4) deliver to each Director of the Company a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and

(3.5) insert a copy of the resolution proposed and statement in the minute book of the Company.

A Director who participated in a meeting at any time electronically in terms of this article shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating.

The directors shall choose one of them to act as chairman of any meeting and shall further determine the manner, form and time of providing notice of its meetings as set out in section 73(4) and is not limited or restricted by the Memorandum of Incorporation. In the absence of such determination, a meeting shall be convened with at least 10 (ten) days notice. The Directors may meet together for the dispatch of business, adjourn or otherwise regulate their meetings as they see fit, subject to the provisions of the Act and the Memorandum of Incorporation.

(4) If all of the directors of the Company acknowledge actual receipt of the notice; are present at a meeting; or waive notice of the meeting, the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice. *Section 73(5)(b)(c)(d)(e)*

(5) In terms of the Act and the Memorandum of Incorporation minutes of Board and Board Committee meetings must include all resolutions adopted by the Board or Board Committees, as the case may be, and must include all declarations of personal financial interests given by notice or made by a Director in terms of section 75. *Section 73(6)*

(6) Each resolution adopted by the Board must be dated and sequentially numbered and are effective as of the date of the resolution, unless the resolution states otherwise. *Section 73(7)(a)*

(7) Signature of the minutes or of a resolution by the chair of the meeting (or by the chair of the next meeting) is evidence of the proceedings of that meeting, or adoption of the resolution, as the case may be.

An extract from such minutes or extract from any resolution in writing, if signed by any Director or the Company Secretary, shall be evidence of the matters stated in such minutes or extract. *Section 73(8)*

### **3.8 Board Quorum**

(1) A Board meeting may not begin unless the majority of the Directors are present in terms of section 73(5)(b).

A matter to be decided at the Board meeting may not begin to be considered unless the majority of the Directors are present.

For purposes of counting a quorum at any time, a Director or his alternate who is personally present at the meeting, or who participates in person electronically at that time, shall be counted towards a quorum at that time.

A person whose election as Director including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not be counted towards any quorum of Directors.

### 3.9 Board Resolutions

- (1) The Board may propose any resolution to be considered by Members and may determine whether that resolution will be considered and voted on at a meeting of Members or by round-robin resolution. *Section 65(2)*
- (2) Each Director has 1 (one) vote on a matter before the Board in terms of section 73(5)(c) except that:
  - (2.1) a Director whose ineligibility to serve as a Director has been determined in terms of the Memorandum of Incorporation, shall not have a vote in respect of that matter in terms of section 71(3);
  - (2.2) a Director who has been suspended in terms of section 70(2) shall not have a vote on any matter before the Board;
  - (2.3) a Director who has a personal financial interest in respect of a matter to be considered by the Board or who knows that a related person has a personal financial interest in the matter in terms of section 75(4) or 75(5), shall not have a vote in respect of that matter in terms of section 75(5)(f)(ii).

A majority of the votes of the Directors present and entitled to exercise their vote on a matter is sufficient to approve a Board Resolution, provided that there is at least a quorum of Directors present.

An abstention from voting shall not be counted as an exercise of a vote, and shall in terms of section 73(5)(d) be disregarded for purposes of calculating whether or not a majority has been obtained.

If a resolution of the Directors has failed because of a tie contemplated in this clause, the Chairman of the Board at the time shall have a casting vote. However, should he fail and/or refuse to exercise such casting vote, the Board shall refer the matter to the Members for the Members to resolve and facilitate the breaking of any deadlock at Director level, failure of which by the Members and/or Directors shall not constitute grounds for the winding-up of the Company except in terms of section 81(1)(d), subject to section 81(2).

A Director unable to attend a Board or Board Committee Meeting may, notwithstanding that this Director has an alternate, authorise any other Director to vote for him at that meeting, and in the event that the Director so authorised shall have a vote for each Director by whom he is so authorised in addition to his own vote. If both the Directors so authorised and an alternate of the Director who granted the authority, are present at the meeting, the alternate shall not be entitled to vote in the place of the absent Director. Authority in terms of this clause must be in writing and must be handed to the person presiding at the meeting at which it is to be used.

- (3) A resolution that could be voted on at a Board meeting other than a Board Resolution that the Company voluntarily begin business rescue proceedings and place the Company under supervision in terms of section 129(1), may instead of being voted on at a meeting be:
  - (3.1) submitted by the Directors proposing the resolution for consideration to each Director in terms of section 74(1)); and
  - (3.2) voted on in writing by Directors entitled to exercise voting rights on that matter within 10 (ten) business days after the resolution was submitted to them.

A resolution will have been adopted as a Board Resolution if it has been supported in writing by the requisite majority of the Directors in person or their alternates who are entitled to exercise voting rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a quorate Board meeting. *Section 74(1) and (2)*

A round-robin resolution of Directors shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution provided that the effective date is not a date earlier than the date the resolution was submitted to Directors for their consideration and, if deemed fit, adoption or, failing any such effective date being specified in the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the Directors or their alternates entitled to do so voting in favour of the resolution. If the approval is undated, the date on which such written approval was communicated to the Company within the 10 (ten) business days, which votes in favour of the resolution in aggregate are sufficient for the resolution to have been passed. *Section 73(7)(b)*

### **3.10 Directors acting other than at Meeting**

- (1) A decision that could be voted on at a meeting of the Board of the Company may instead be adopted by written consent of a majority of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided. *Section 74(1)*
- (2) A decision made in the manner in terms of this Article is of the same effect as if it had been approved by voting at a meeting. *Section 74(2)*

### **3.11 Register of Directors**

- (1) The South African Institute of Tax Professionals (NPC) must establish and maintain a record of its directors, including all the details about each director (including that director's email address) required in terms of and for the period stipulated in the Act and the Companies Regulations in a register of directors in terms of section 24(3)(b), section 24(5) and regulation 23.
- (2) For purposes of the Act and in relation to the register of directors required to be kept by the Company in terms of section 24(3)(b), a director is defined in section 1 to mean:
  - (2.1) a member of the Board, being a person previously appointed in terms of the Companies Act 1973 or elected as a director of the Company in terms of the Act;
  - (2.2) an alternate director for a member of the Board;
  - (2.3) any person, if any, occupying the position of director or alternate director but by whatever name designated,

And accordingly, the prescribed details of each such person is required to be included by the Company in the register of directors of the Company.

### **3.12 Directors' Remuneration**

- (1) The South African Institute of Tax Professionals (NPC) shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is

or was an incorporator of the Company, or who is a member or director, or person appointing a director, of the Company, except –

- (1.1) as reasonable remuneration for goods delivered or full-time services rendered to; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company
- (1.2) as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
- (1.3) as a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the company; or
- (1.4) in respect of any legal obligation binding on the Company. *Item 1(3) of Schedule 1 and Section 122(b) Act 3 of 2011*

### **3.13 Financial Assistance**

- (1) The South African Institute of Tax Professionals (NPC) is prohibited from providing a loan to, securing a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a director of the Company or of a related or inter-related company, or to a person related to any such director. *Item 5(3) of Schedule 1.*
- (2) The Memorandum of Incorporation does not limit, restrict or qualify the said financial assistance, loan or securing a debt or obligation if it is in the ordinary course of the Company's business and for fair value; constitutes an accountable advance to meet legal expenses in relation to a matter concerning the Company or anticipated expenses to be incurred by the person on behalf of the Company, is to defray the person's expenses for removal at the Company's request; or is in terms of an employee benefit scheme generally available to all employees or a specific class of employees. *Item 5(4) of Schedule 1, section 122(a) of Act 3 of 2011.*

### **3.14 Directors' personal financial interests**

- (1) At any time, a Director shall disclose any personal financial interest in advance, by delivering to the Board, or Members a notice in writing setting out the nature and extent of that interest, to be used generally until changed or withdrawn by further written notice from that Director. *Section 75(4)*
- (2) The Director:
  - (2.1) shall disclose the interest and its general nature before the matter is considered at the meeting;
  - (2.2) shall disclose to the meeting any material information relating to the matter, and known to the Director;
  - (2.3) shall disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
  - (2.4) if present at the meeting, shall leave the meeting immediately after making any disclosure;
  - (2.5) not take part in the consideration of the matter;

- (2.6) while absent from the meeting is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting, and is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- (2.7) shall not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board. *Section 74(2)*

### **3.15 Standards of Directors' conduct**

- (1) In this clause, Director includes alternate Director and a Prescribed Officer or a person who is a Member of a committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company. *Section 76(1)(a)(b)*
- (2) A Director of the Company shall not use the position of Director, or any information obtained while acting in the capacity of a Director to gain an advantage for the Director or for another person other than the Company or a wholly-owned subsidiary of the Company or to knowingly cause harm to the Company or a subsidiary of the Company and communicate to the Board at the earliest practicable opportunity any information that comes to the Director's attention, unless the Director reasonably believes that the information is immaterial to the Company or generally available to the public, or known to the other Directors; or is bound not to disclose that information by a legal or ethical obligation of confidentiality. *Section 76(2)(a)(i)(ii) and section 76(2)(b)(i)(ii)*
- (3) A Director of the Company shall exercise the powers and perform the functions of Director in good faith and for a proper purpose, in the best interests of the Company and with the degree of care, skill and diligence that may reasonably be expected of a person, carrying out the same functions in relation to the Company as those carried out by that Director, and having the general knowledge, skill and experience of that Director. *Section 76(3)(a)(b) and section 76(3)(c)(i)(ii)*
- (4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of Director in terms of in the best interest of the Company and with the necessary degree of care, skill and diligence of that Director,
- (4.1) the Director shall take reasonably diligent steps to become informed about the matter;
- (4.2) the Director has no material personal financial interest in the subject matter of the decision, and has no reasonable basis to know that any related person has a personal financial interest in the matter; or
- (4.3) the Director shall disclose any personal financial interest in advance to either the Board, with regard to that matter, and the Director has a rational basis for believing and shall believe, that the decision was in the best interests of the Company and is entitled to rely on:
- (4.3.1) the performance by one or more employees of the Company whom the Director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;
- (4.3.2) legal counsel, accountants or other professional persons retained by the Company, the Board or a committee as to matters involving skills or expertise that the Director reasonably believes are matters within the particular person's professional or expert

competence or as to which the particular person merits confidence. *Section 76(4)(a)(i iii), section 76(4)(b)(i)(ii), section 76(5)(a), section 76(5)(b)(i)(ii) and section 76(5)(c)*

### **3.16 Liability of Directors and Prescribed Officers**

- (1) In this clause the term 'Director' includes alternate Director and a Prescribed Officer or a person who is a Member of a Board Committee of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company.
- (2) A Director of the Company shall be held liable for breach of a fiduciary duty, for any loss, damages or costs sustained by the Company as a consequence of any breach by the Director of a duty in relation to:
  - (2.1) a Director's personal financial interests in terms of section 75 of the Act;
  - (2.2) the use of the position of Director, or any information obtained to gain an advantage or to knowingly cause harm to the Company in terms of section 76(2)(a) of the Act;
  - (2.3) communicate to the Board of the Company any material information to the Company in terms of section 76(2)(b) of the Act;
  - (2.4) perform the functions of Director in good faith and for a proper purpose in terms of section 76(3)(a) of the Act;
  - (2.5) perform the functions of Director in the best interests of the Company in terms of clause section 76(3)(b) of the Act. *Section 77(2)(a)*
- (3) A Director of the Company shall be held liable in relation to delict for any loss, damages or costs sustained by the Company as a consequence of any breach by the Director of:
  - (3.1) exercising the powers or performing the functions of Director with the degree of care, skill and diligence expected of that Director, carrying out the same functions in relation to the Company as those carried out by that Director and having the general knowledge, skill and experience of that Director;
  - (3.2) any provision of the Act;
  - (3.3) any provision of the Company's Memorandum of Incorporation. *Section 77(2)(b)(i - iii)*
- (4) A Director of the Company shall be held liable for any loss, damages or costs sustained by the Company as a direct or indirect consequence of the Director having:
  - (4.1) acted in the name of the Company, signed anything on behalf of the Company or purported to bind the Company or authorise the taking of any action by or on behalf of the Company, despite knowing that the Director lacked the authority to do so in terms of section 77(3)(a);
  - (4.2) acquiesced in the carrying on of the Company business despite knowing that it was being conducted recklessly with gross negligence and with intent in terms of section 77(3)(b);

- (4.3) been a party to an act or omission by the Company despite knowing that the act or omission was calculated to defraud a creditor, employee or Member of the Company or had another fraudulent purpose in terms of section 77(3)(c);
- (4.4) signed, consented to, or authorised, the publication of:
  - (4.4.1) any financial statements that were false or misleading in a material respect in terms of section 77(3)(d)(i); or
  - (4.4.2) a prospectus or a written statement that contained an 'untrue statement' or a statement to the effect that a person had consented to be a Director of the Company when no such consent had been given, despite knowing that the statement was false, misleading or untrue in terms of section 77(3)(d)(ii).
- (5) The liability of a person in terms of this clause is joint and several with any other person who shall be held liable for the same act, and any person who would be so liable is jointly and severally liable with all other such persons to pay the costs of all parties in a court unless the proceedings are abandoned, or exculpate that person, and to restore to the Company any amount improperly paid by the Company as a consequence of the impugned act, and not recoverable in terms of the Act. *Section 77(6) and section 77(8)(a)(b)*
- (6) Proceedings to recover any loss, damages or costs for which a person is or may be held liable shall not be commenced more than 3 (three) years after the act or omission that gave rise to that liability. In any proceedings against a Director, other than for wilful misconduct or wilful breach of trust, the Court may relieve the Director, either wholly or partly, from any liability. *Section 77(7) and (9)*

### **3.17 Indemnification and Directors' Insurance**

- (1) In terms of the Act and the Memorandum of Incorporation the authority of the Company to purchase market related insurance to protect the Company or a Director, as contemplated in section 78(7) in the Act, is not limited, restricted or extended by the Memorandum of Incorporation, giving authority to the Company to purchase insurance to protect a Director against any liability or expenses for which the Company is permitted to indemnify a Director or the Company against any contingency including, but not limited, to any expenses that the Company is permitted to advance or for which the Company is *permitted to indemnify* a Director.

## **ARTICLE 4 – TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY OF THE COMPANY**

### **4.1 Records and Financial Statements**

The accounting records shall be kept at or be accessible from its Registered office. The accounting records shall be open to inspection by any of the Directors at any time.

### **4.2 Financial Year End of the Company**

- (1) The Company's financial year which is its annual accounting period, ends on a date set out in the Company's Notice of Incorporation, subject to any change made in terms of this sub-article of the Memorandum of Incorporation, being 31 December annually.
- (2) In terms of the Act and this Memorandum of Incorporation, the financial year end of the Company, or any changes to the financial year end, shall be such period or adjusted period as the member by ordinary

resolution from time to time approve. The board, may, with the prior approval of members by ordinary resolution, change the financial year of the Company in terms of section 27(4). *Section 27(4)*

#### **4.3 Accounting Records of the Company**

- (1) In terms of the Act and the Memorandum of Incorporation the Company shall keep accurate and complete accounting records in one of the official languages of the Republic, as necessary to provide an adequate information-base sufficient to enable the Company to satisfy all reporting requirements applicable to it, as set out in this sub-article, and to provide for the compilation of financial statements.
- (2) The accounting records shall include a record of any property held by the Company in a fiduciary capacity, or in any capacity or manner contemplated in section 65(2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) *Regulation 25(3)(b)(i)(ii)*

#### **4.4 Financial Statements and Financial Year**

- (1) The Company's financial statements, including any Annual Financial Statements, shall satisfy the financial reporting standards as to form and content, present fairly the state of affairs and business of the Company, show the Company's assets, liabilities and equity, as well as its income and expenses, set out the date on which the statements were published, and the accounting period to which the statements apply, and bear, on the first page of the statements, a prominent notice indicating whether the statements have been audited in compliance with any applicable requirements of this Act, if not audited, have been independently reviewed in compliance with any applicable requirements of this Act, or have not been audited or independently reviewed, and the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, those statements. *Section 29(1)(a – d), section 29(1)(e)(i)(aa)(bb)(cc), section 29(i)(e)(ii)*
- (2) Any financial statements prepared by the Company, including any Annual Financial Statements of the Company shall not be false or misleading in any material respect, or incomplete in any material particular, subject only to clause 3 of this sub-article. *Section 29(2)(a)(b)*
- (3) The South African Institute of Tax Professionals (NPC) is not limited or restricted by the Memorandum of Incorporation to provide any person with a summary of any particular financial statements, but any such summary shall comply with any prescribed requirements, and the first page of the summary shall bear a prominent notice stating that it is a summary of particular financial statements prepared by the Company, and setting out the date of those statements, stating whether the financial statements that it summarises have been audited or are unaudited, stating the name, and professional designation, if any, of the individual who prepared or supervised the preparation of the financial statements that it summarises, and setting out the steps required to obtain a copy of the financial statements that it summarises. *Section 29(3)(a), section 29(3)(b)(i – iv)*
- (4) The Directors shall, in accordance with sections 30 and 31 of the Companies Act, cause to be prepared and laid before the Company at its Annual General Meeting its audited Financial Statements, not less than 10 (ten) business days before the date of any annual general meeting, a summarised form of the Financial Statements to be presented at such meeting and directions for obtaining a copy of the complete Financial Statements for the preceding financial year shall be sent to every member, subject and in accordance with the provisions of the Companies Act and this Memorandum of Incorporation. Nothing contained in this clause, shall impose a duty on the directors to send copies of such documents to any person whose address is not known to the Company or who has waived his right to receive notice from the Company.

#### 4.5 Annual Financial Statements

- (1) The Company's Annual Financial Statements shall be prepared in accordance with the provisions of section 30(2)(b)(i) of the Act and section 20(c) of Act 3 of 2011 and be audited as a statutory audit by the Auditor appointed in terms of the Memorandum of Incorporation. *Section 30(2)(b)(i)(aa)(bb)(cc)*

Any Auditor appointed must be a Registered Auditor. If the Company appoints a firm as its Auditor, any change in the composition of the Members of that firm shall not by itself create a vacancy in the office of Auditor. *Section 90(1A) and 90(2)*

- (2) The audited Annual Financial Statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall:
  - (3.1) satisfy as to form and content, the financial reporting standards of IFRS; and
  - (3.2) subject to and in accordance with IFRS:
    - (3.2.1) present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
    - (3.2.2) show the Company's assets, liabilities and equity, as well as its income and expenses;
    - (3.2.3) set out the date on which the statements were produced and the accounting period to which they apply; and
    - (3.2.4) bear on the first page thereof a prominent notice indicating that the Annual Financial Statements have been audited as a statutory audit and the name and professional designation of the person who prepared them.
- (3) The Annual Financial Statements of the Company shall be approved by the Board, be signed by an authorised Director and be presented to the Members at the first Members' Meeting after the statements have been approved by the Board. *Section 30(3)(d) of the Act, section 55 of Act 3 of 2011*

#### 4.6 Appointment of Auditor

- (1) The Memorandum of Incorporation requires the Company to appoint an Auditor.
- (2) Provided that no person who is ineligible (other than by virtue of being juristic person) or disqualified from serving as a Director of the Company in terms of section 69(7) or (8) shall be appointed as the Auditor. *Section 34(2), section 84(1)(c)(ii), section 84(a – c), sections 86-89, section 94 and Part A, Chapter 3*
- (3) The South African Institute of Tax Professionals (NPC) shall appoint a person or a firm as an Auditor of the Company and the individual determined by that firm shall be a Registered Auditor. *Section 90(2)(a)*
- (4) The South African Institute of Tax Professionals (NPC) prohibits in terms of the Memorandum of Incorporation to appoint any of the following persons as an Auditor of the Company:
  - (6.1) a Director or Prescribed Officer of the Company;
  - (6.2) an employee or consultant of the Company who was or has been engaged for more than 1 (one) year in the maintenance of any of the Company's financial records or the preparation of any of its financial statements;

- (6.3) a Director, officer or employee of a person appointed as Company Secretary;
  - (6.4) a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work for the Company;
  - (6.5) a person who, at any time during the 5 (five) financial years immediately preceding the date of appointment, was any of the persons abovementioned or a person related to any of the persons abovementioned. *Section 90(2)(b)(i-vi)*
- (5) The Board shall be responsible for the appointment of a person or firm, and approved by Ordinary Resolution of the ordinary Members at the Members' Meeting of the Company, as the Auditors for the Company, on such terms and subject to such conditions and for such period(s) as the Board in its discretion deems fit, provided that any Registered Auditors appointed by the Company must be independent of the Company as contemplated in section 94(8), and subject to and in compliance with the requirements and criteria as to Auditors and their appointment set out in sections 90, 91 and 92, and any timeous determination by the Board of the fees to be paid to the Auditors and the Auditor's terms of engagement in terms of section 94(7)(b) if such determination has been made.

If the position of Auditors to the Company becomes vacant for any reason, the Board shall fill that vacancy by the appointment of another person (or firm) as the Auditors to the Company.

#### **4.7 Registration of Auditor**

- (1) The Company shall in accordance with section 85, establish or cause to be established and maintain a record or Register of its Auditors, including, in respect of each person appointed as Auditor of the Company, the name, including any former name, of each such person and the date of every such appointment.

If a firm or juristic person is appointed, the Company shall maintain a record of the name, registration number and registered office address of that firm or juristic person, and if the Company appoints a firm as an Auditor, the individual determined by that firm in terms of the Auditing Profession Act, to be responsible for performing the functions of Auditor. *Section 85(1)(a)(i)(ii), section 85(1)(b)(i)(ii) and section 90(3)*

- (2) Within 10 (ten) business days after making the abovesaid appointment or after the termination of service of such an appointment, the Company shall file a notice of the appointment or termination. *Section 85(3)*
- (3) The Incorporators of the Company may file a notice of the appointment of the Company's first Auditor as part of the Company's Notice of Incorporation. *Section 85(4)*

#### **4.8 Rights and restricted functions of Auditors**

- (1) The South African Institute of Tax Professionals (NPC) is prohibited from demanding services by the Company Auditor which would place the Auditor in conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act. *Section 93(3)(a)(b)*
- (2) Any Auditors of the Company for the time being shall have the rights and restricted functions set out in section 93 of the Act. The Company Auditor shall have the right of access at all times to the accounting records and all books and documents of the Company and entitled to require from the Directors or Prescribed Officers of the Company any information and explanations necessary for the performance of the Auditor's duties and shall be entitled to attend any general Members' Meeting, receive all notices of and other communications

relating to any general Members' Meeting, and be heard at any general Members' Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions. *Section 93(1)(a) and section 93(1)(c)(i-iii)*

#### **4.9 Rotation of Auditors**

- (1) The South African Institute of Tax Professionals (NPC) is prohibited from employing the services of the Auditor or the designated Auditor of the Company for more than 5 (five) consecutive financial years. *Section 92(1)*
- (2) If an individual has served as the Auditor or designated Auditor of the Company for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated Auditor, the individual shall not be appointed again as the Auditor or *designated Auditor* of the Company until after the expiry of at least 2 (two) further financial years. *Section 92(2)*
- (3) In the event that the Company has appointed 2 (two) or more persons as joint Auditors, the Company shall manage the rotation as required by the Memorandum of Incorporation in such a manner that all of the joint Auditors do not relinquish office in the same year. *Section 92(3)*

#### **4.10 Resignation of Auditors and Vacancies**

- (1) If a vacancy arises in the office of Auditor of the Company at any time, the Board:
  - (1.1) must appoint a new Auditor within 40 (forty) business days if there was only one incumbent Auditor of the Company; and
  - (1.2) may appoint a new Auditor at any time, if there was more than one incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company.
- (2) If the Company appoints a firm as its Auditor any change in the composition of the Members of that firm does not by itself create a vacancy in the office of Auditor for that year, but a change in more than  $\frac{1}{2}$  (one half) of the composition of the Members of that firm will constitute the resignation of the firm as Auditor of the Company, giving rise to a vacancy. *Section 91(4) and (5)*
- (3) A retiring Auditor may be automatically reappointed at a General Meeting without any resolutions being passed, subject to the restrictions set out in sections 90(6) and 92. *Section 90(6) and 92*
- (4) If the General Meeting of the Company does not appoint or reappoint an Auditor, the Board must fill the vacancy in the office within 40 (forty) business days after the date of the General Meeting. *Section 90(7)*

#### **4.11 Use of the Company's Name and Registration Number**

- (1) The South African Institute of Tax Professionals (NPC) shall have its name and registration number mentioned in legible characters in all notices and other official publications of the Company, including such notices and publications in electronic format as contemplated in the Electronic Communications and Transactions Act, and in all bills of exchange, promissory notes, cheques and orders for money or goods and in all letters, delivery notes, invoices, receipts and letters of credit of the Company. *Section 32(4)*
- (2) The Memorandum of Incorporation prohibits, limits and restricts the use of the name or registration number of the Company in a manner likely to convey an impression that the person is acting or communicating on

behalf of the Company, unless the Company has authorised that person to do so, or using a form of name for any purpose if, in the circumstances, the use of that form of name is likely to convey a false impression that the name is the name of the Company. *Section 32(3)(a)(b)*

- (3) A contravention of this sub-article of this Memorandum of Incorporation constitutes an offence. *Section 32(5)*

## **ARTICLE 5 – ENHANCED ACCOUNTABILITY AND TRANSPARENCY**

### **5.1 Appointment of Company Secretary and Audit Committee**

- (1) Save for the appointment of an auditor and the Statutory Audit, the Company does not elect to comply with the extended accountability requirements in terms of Chapter 3 of the Act, except to the extent provided for in this Memorandum of Incorporation as set out below.
- (2) The Memorandum of Incorporation requires the Company to appoint a Company Secretary and Audit Committee. The powers, functions and duties of the Company Secretary and the Audit Committee is set out in this Memorandum of Incorporation. Where the Memorandum of Incorporation is silent on any matter, regard shall then be had to the provisions of the Act.
- (3) No person who is ineligible (other than by virtue of being juristic person) or disqualified from serving as a Director of the Company in terms of section 69(7) or (8) shall be appointed as the Company Secretary or to the Audit Committee. *Section 34(2), section 84(1)(c)(ii), section 84(a – c), sections 86-89, section 94 and Part A, Chapter 3*

### **5.2 Registration of Company Secretary and Audit Committee**

- (1) The Company shall establish or cause to be established and maintain a record or Register of its Company Secretaries, including, in respect of each person appointed as Company Secretary of the Company, the name, including any former name, of each such person and the date of every such appointment.
- (2) Within 10 (ten) business days after making the abovesaid appointment or after the termination of service of such an appointment, the Company shall file a notice of the appointment or termination. *Section 85(3)*

### **5.3 Company Secretary**

- (1) Every Company Secretary shall have the required knowledge of, or experience with the relevant laws and be a permanent resident of the Republic, and shall remain so while serving as a Company Secretary of the Company. *Section 86(2)(a)(b)*
- (2) The first Company Secretary of the Company shall be appointed by the Directors of the Company. *Section 86(3A)(b)(i)*
- (3) Within 60 (sixty) business days after a vacancy arises in the office of Company Secretary, the Board shall fill the vacancy by appointing a person whom the Directors consider to have the requisite knowledge and experience. *Section 86(4)*
- (4) Without in any way limiting or excluding any other grounds for removing a person as the Company Secretary, any person who is the Company Secretary for the time being who:
- (4.1) does not, in the reasonable opinion of the Board, have the requisite knowledge of, or experience with, relevant laws in terms of section 86(2)(a) of the Act; or

- (4.2) ceases to be a permanent resident of the Republic, in terms of section 86(2)(b) of the Act; or
- (4.3) ceases to be a person eligible or qualified to serve as a Director of the Company as contemplated in section 84(5) of the Act,

shall cease to be the Company Secretary on delivery to him of a notice by the Board terminating his appointment, which notice from the Board shall be given within 10 (ten) business days of the Board becoming aware of any of the circumstances in this sub-article and sections 84 and 86 of the Act. *Section 84(5) and section 86(2)(a)(b)*

#### **5.4 Juristic Person or Partnership as Company Secretary**

- (1) A juristic person or partnership may be appointed to hold the office of Company Secretary of the Company subject to the provision that:
  - (1.1) every employee of that juristic person who provides Company Secretary services or partner and employee of that partnership, shall not be disqualified to serve as a Director or disqualified to be appointed as a Company Secretary, and
  - (1.2) at least 1 (one) employee of that juristic person, or 1 (one) partner or employee of that partnership, shall be appointed as Company Secretary either by the Incorporators of the Company or the Directors of the Company. *Section 69(8), section 87(1)(a)(b), section 84(5), and section 86*

#### **5.5 Duties of Company Secretary**

- (1) A Company Secretary shall be accountable to the Company's Board. *Section 88(1)*
- (2) A Company Secretary's duties include, but are not restricted to:
  - (2.1) providing the Directors of the Company collectively and individually with guidance as to their duties, responsibilities and powers;
  - (2.2) making the Directors aware of any law relevant to or affecting the Company;
  - (2.3) reporting to the Company's Board any failure on the part of the Company or a Director to comply with the Memorandum of Incorporation or Rules (if applicable) of the Company or the Act;
  - (2.4) ensuring that minutes of all Members' Meetings, Board meetings and the meetings of any committees of the Directors, are properly recorded in accordance with the Act;
  - (2.5) certifying in the Company's Annual Financial Statements whether the Company has filed required returns and notices in terms of the Act, and whether all such returns and notices appear to be true, correct and up to date;
  - (2.6) ensuring that a copy of the Company's Annual Financial Statements is sent, in accordance with the Act, to every person who is entitled to it; and
  - (2.7) carrying out the Company's compliance with the requirements of Part C of Chapter 2 and Chapter 3 of the Act should the Company so require in terms of the Act. *Section 88(2)(a-g) and section 33(3)*

## 5.6 Resignation or removal of Company Secretary

- (1) The Company Secretary may resign from office by giving the Company 1 (one) month's written notice. In the event that the Company Secretary resigns from office by giving the Company less than 1 (one) month's written notice, the Company Secretary may then only resign with Board approval. *Section 89(1)(a)(b)*
- (2) In the event that the Company Secretary is removed from office by the Board, the Company shall include a statement in its Annual Financial Statements, relating to that financial year, setting out the Company Secretary's contention as to the circumstances that resulted in the removal, and shall be included in the Director's report in the Company's Annual Financial Statements. *Section 89(2) and (4)*
- (3) If the office of Company Secretary becomes vacant for any person, the Company shall fill that vacancy by the appointment of another person as Company Secretary. *Section 86(1)*

## 5.7 Audit Committee

- (1) The Audit Committee shall be comprised of least 3 (three) Members, one of which may be and independent, non-executive director. The other members comprising the Audit Committee shall be independent third parties as envisaged in the Companies Act.
- (2) At least one-third of the Members of the Company's Audit Committee at any particular time, shall have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.
- (3) Neither the appointment nor the duties of an Audit Committee shall reduce the functions and duties of the Board or the Directors of the Company, except with respect to the appointment, fees and terms of engagement of the Auditor.
- (4) The South African Institute of Tax Professionals (NPC) shall pay all expenses reasonably incurred by the statutory Audit Committee, including, if the statutory Audit Committee considers it appropriate, the fees of any consultant or specialist engaged by that Audit Committee to assist it in the performance of its functions, subject to any Board approved budgetary constraints with respect thereto having regard to, among other financial constraints, the Solvency and Liquidity Test as applied from time to time with respect to the Company.
- (5) The Members of the Audit Committee must be elected at each General Meeting of the Company, in accordance with and subject to the requirements and criteria as to the Members and composition of such a committee as determined by the Nominations Committee.

If a vacancy arises on the Audit Committee, the Board must fill such a vacancy within 40 (forty) business days after the General Meeting.

- (6) The Memorandum of Incorporation prohibits any Member of the Audit Committee to be:
  - (8.1) involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;

- (8.2) a Prescribed Officer, or full-time employee, of the Company or another related or inter-related company, or have been such an officer or employee at any time during the previous 3 (three) financial years; or
  - (8.3) a material supplier or customer of the Company such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and
  - (8.4) not be related to any abovesaid person. *Section 94(4)(b)(i-iii) and section 94(4)(c)*
- (7) In terms of the Memorandum of Incorporation, the duties of the Audit Committee of the Company shall be as follows:
- (9.1) to nominate, for appointment as Auditor of the Company, a Registered Auditor who, in the opinion of the Audit Committee, is independent of the Company;
  - (9.2) to determine the fees to be paid to the Auditor and the Auditor's terms of engagement;
  - (9.3) to ensure that the appointment of the Auditor complies with the provisions of the Act and any other legislation relating to the appointment of Auditors;
  - (9.4) to determine the nature and extent of any on-audit services that the Auditor may provide to the Company or that the Auditor must not provide to the Company or a related Company;
  - (9.5) to pre-approve any proposed agreement with the Auditor for the provision of non-audit services to the Company;
  - (9.6) to prepare a report, to be included in the Annual Financial Statements for that financial year, describing how the Audit Committee carried out its functions, stating whether the Audit Committee is satisfied that the Auditor was independent of the Company and commenting in any way the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the Company;
  - (9.7) to receive and deal appropriately with any concerns or complaints, whether from within or outside the Company or on its own initiative, relating to the accounting practices and internal audit of the Company, the content or auditing of the Company's financial statements, the internal financial controls of the Company or any related matter;
  - (9.8) to make submissions to the Board on any matter concerning the Company's accounting policies, financial control, records and reporting; and
  - (9.9) to perform such other oversight functions as may be determined by the Board. *Section 94(7)(a-i)*
- (8) In ensuring the independence of the Registered Auditor of the Company, the Audit Committee of the Company shall ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company except as Auditor or for rendering other services to the Company.

Furthermore the Audit Committee shall consider whether the Auditor's independence may have been prejudiced as a result of any previous appointment as Auditor, or having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company and shall consider

compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board of Auditors established by the Auditing Profession Act, in relation to the Company and if the Company is a Member of a group of Companies, any other Company within that group. *Section 94(8)(a)(i)(ii), section 94(8)(b)(i)(ii) and section 94(8)(c)*

- (9) The South African Institute of Tax Professionals (NPC) has in terms of the Memorandum of Incorporation the right to appoint an Auditor other than one nominated by the Audit Committee at its General Meeting, subject to such an Auditor being appointed, the appointment can only be valid if the Audit Committee is satisfied that the proposed Auditor is independent of the Company. *Section 94(9)*
- (10) In terms of the Memorandum of Incorporation, the Board shall appoint a person to fill any vacancy on the Audit Committee within 40 (forty) business days after the vacancy arises. *Section 94(6)*
- (11) A statutory Audit Committee of the Company, if and when in existence, shall only have the statutory duties set out in section 94(7). *Section 94(7)*
- (12) The Members of the statutory Audit Committee shall hold and conduct their meeting in accordance with the provisions in the Rules (if applicable) of the Company, if applicable, governing the holding and conduct of such meetings, which Rules (if applicable) are binding on each Director who is a Member of the committee in terms of section 15(6)(c)(i), subject to the Board and the Board Committees Charter, if applicable. *Section 94*
- (13) The South African Institute of Tax Professionals (NPC) shall pay all expenses incurred by its Audit Committee, including, if the Audit Committee considers it appropriate, the fees of any consultant or specialist engaged by that Audit Committee to assist it in the performance of its functions, subject to any Board approved budgetary constraints with respect thereto having regard to, amongst other financial constraints, the Solvency and Liquidity Test as applied to the Company. *Section 94(11) read with section 4*

## **ARTICLE 6 – FUNDAMENTAL TRANSACTIONS**

### **6.1 Disposals, Mergers and Amalgamations**

- (1) The South African Institute of Tax Professionals (NPC) is prohibited from amalgamating or merging with, or converting to a Profit Company; or disposing any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company. *Item 2(1)(a)(b) of Schedule 1*
- (2) Any proposal to dispose of all or the greater part of its assets or undertaking or amalgamate or merge with another Non-Profit Company shall be submitted to the voting members for approval. *Item 2(2)(a)(b) of Schedule 1*
- (3) A notice of a Members' meeting to consider a resolution to approve a disposal shall be delivered at least 10 (ten) business days before the date on which the meeting is to begin and in the prescribed manner, to each member of the Company and include a written summary of the terms of the transaction to be considered at the meeting. *Section 112(3)(a)(b)*
- (4) The resolution shall be effective only to the extent that it authorises a specific transaction. *Section 112(5), section 69(b) of Act 3 of 2011*
- (5) A proposed transaction shall be approved by a Special Resolution adopted by persons entitled to exercise voting rights on such a matter, at a meeting called for that purpose and at which sufficient persons are present

to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised on that matter as required by the Company's Memorandum of Incorporation and by a Special Resolution by the Members of the Company's holding Company if the holding Company is a Company or an external Company; the proposed transaction concerns a disposal of all or the greater part of the assets or undertaking of the subsidiary; and having regard to the consolidated financial statements of the holding Company, the disposal by the subsidiary constitutes a disposal of all or the greater part of the assets or undertaking of the holding Company. *Section 115(2)(a)(b), and section 71(b)(c) of Act 3 of 2011*

- (6) Any part of the undertaking or assets of the Company to be disposed of shall be fairly valued at the date of the proposal. *Section 112(4)*

## **6.2 Compliance and Tax Exemption: Section 30B of the Income Tax Act (Act 58 of 1962, as amended) and other provisions.**

In amplification of that which has been set out above, and in confirmation of the directors mandate to ensure compliance with all legislative and statutory obligations imposed on the Institute, and with a view toward complying with the provisions of Section 30B with regard to the tax exempt status of the Institute, it is recorded as follows:

- (1) The company shall be governed by a board as provided for in this Memorandum of Incorporation consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company;
- (2) No single person may directly or indirectly control the decision-making powers relating to the Company;
- (3) The Company may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
- (4) The Company is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;
- (5) No member may directly or indirectly have any personal or private interest in the Company;
- (6) Substantially the whole of the activities of the Company must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group;
- (7) The Company may not have a share or other interest in any business, profession or occupation which is carried on by its members;
- (8) The Company must not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- (9) Substantially the whole of the Company's funding must be derived from its annual or other long-term subscription of members or from an appropriation by the government of the Republic in the national, provincial or local sphere;
- (10) The Company must as part of its dissolution transfer its assets to-
  - a. another entity approved by the Commissioner in terms of this section;
  - b. a public benefit organisation approved in terms of section 30;

- c. an institution, board or body which is exempt from tax under section 10 (1) (cA) (i);
  - d. the government of the Republic in the national, provincial or local sphere;
- (11) The Company will submit any amendment of the Memorandum of Incorporation of the Company to the Commissioner within 30 days of its amendment;
  - (12) The Company will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
  - (13) The Company is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part II A of Chapter III of the Income Tax Act (58 of 1962), or a transaction, operation or scheme contemplated in section 103(5).

## **ARTICLE 7 – DISSOLUTION AND DISTRIBUTION OF NET VALUE OF COMPANY**

### **7.1 Winding-Up or Dissolution**

- (1) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, no past or present member or director of the Company or person appointing a director of the Company is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied.
- (2) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, no past or present member or director of the Company or person appointing a director of the Company is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied and the entire net value of the Company shall be distributed to one or more Non-Profit Companies, registered external Non-Profit Companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object; and as determined in terms of the Company's Memorandum of Incorporation or by its members or its Directors at or immediately before the time of its dissolution or by the court, if the Memorandum of Incorporation by its Members or its Directors, at or immediately before the time of its dissolution, failing such determination, in terms of the provisions of the Companies Act 2008 or by order of Court. *Item 1(4)(a)(b) of Schedule 1*
- (3) Any Resolution for the winding-up or deregistration of the Company be approved by the Commissioner of the South African Revenue Service.

On dissolution or liquidation the excess funds and remaining assets of the Company be transferred to one or more of the following:

- (3.1) A similar organisation incorporated or established in the Republic which has been approved as a Public Benefit Organisation in terms of section 30 of the Income Tax Act;
- (3.2) An organisation established under any law which is exempt from Tax in terms of section 10(1)(cA) of the Income Tax Act whose sole or principal object is the carrying on of an approved public benefit activity;

- (3.3) A department of State of Administration in the National, Provincial or Local sphere of Government of South Africa.

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