

Republic of South Africa

In accordance with

s16(1)(c) of the

Companies Act, 2008

**MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY  
WITH MEMBERS**

Name of company: **THE COMPLIANCE INSTITUTE SOUTHERN AFRICA (NPC)**

referred to in this Memorandum of Incorporation as "the Institute"

Registration No. 2003/015642/08

This MOI was adopted by Special Resolution passed at the Annual General Meeting on 24 June 2021 in substitution of the existing memorandum of association and articles of association of the Institute.

## 1. INTERPRETATION

1.1 In this Memorandum of Incorporation, unless the context otherwise requires:

- 1.1.1 "Board" - means the Board of Directors of the Institute;
- 1.1.2 "Chairperson" - means the chairperson of the Board of Directors;
- 1.1.3 "Commission" - means the Companies and Intellectual Property Commission established in terms of section 85;
- 1.1.4 "Companies Act" - means the Companies Act, No. 71 of 2008, as amended;
- 1.1.5 "Directors" - means the directors for the time being of the Institute;
- ~~1.1.6 "ex officio Director" - means a person who holds office as a Director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's memorandum of incorporation;~~
- 1.1.6 "General Meeting" - means any general meeting of the members, or any adjournment thereof, as the case may be, and all references in this MOI to "General Meeting" shall, where the context so requires, include a reference to an "Annual General Meeting";
- 1.1.7 "Good standing" - means a state of compliance of the members with this MOI and with the standards of conduct applicable to that member at each time, including the payment of outstanding fees, excluding any member who is subject to disciplinary proceedings or suspension from membership;
- 1.1.8 "Income Tax Act" - means the Income Tax Act, No. 58 of 1962 as amended or any legislation which replaces it;
- ~~1.1.9 "Individual" - means a natural person;~~
- ~~1.1.10 "Independence" - generally means the exercise of objective, unfettered judgement. When used as the measure by which to judge the appearance of independence, or to categorise a non-executive Member of the governing body or its committees as independent, it means the absence of an interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision making;~~
- ~~1.1.11.1.9~~ "the Institute" - means the Compliance Institute Southern Africa (NPC) (registration number 2003/015642/08), a nonprofit company incorporated and existing under the laws of the Republic;
- ~~1.1.12.1.10~~ "Member" - means any member of the Institute as contemplated by clause in this MOI and recorded in the Institute's members' register;
- ~~1.1.13.1.11~~ "MOI" - means this Memorandum of Incorporation;
- ~~1.1.14.1.12~~ "Non-executive Director" - means a director who is ordinarily not involved in the daily management or operations of the Institute and who is ordinarily elected by members at General Meetings of the Institute, unless the Board fills vacancies subject to re-election by the members.
- ~~1.1.15 "Record Date" - means the date established under section 59 on which a company determines the identity of its members for the purposes of the Companies Act;~~
- ~~1.1.16.1.13~~ "Republic" - means the Republic of South Africa;
- ~~1.1.17 "Rules" - means any rules made by the Institute as contemplated in section 15(3) to (5);~~
- ~~1.1.18.1.14~~ "Sign" - includes electronic signatures the reproduction of a signature lithography, printing with an india rubber stamp, or any other mechanical process, or partly the one and partly the other process and "signature" has the corresponding meaning; and
- ~~1.1.19.1.15~~ "Writing" - has its ordinary meaning in law, and includes printing, typewriting, lithography or any other electronic or mechanical process, or partly one and partly the other. A requirement that a document, notice or information should be given in Writing will be met if the document, notice or information is in the form of a data message and accessible in a manner usable for subsequent reference. "Written" has a corresponding meaning.
- 1.2 All references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise.
- 1.3 The headings are for reference purposes only and shall not affect the interpretation of this MOI.

Commented [CS1]: This does not require a definition, as it has a plain meaning.

Commented [CS2]: To avoid circular definitions

Commented [CS3]: Context is clear

Commented [CS4]: Not used

Commented [CS5]: Not used

Commented [CS6]: removed

- 1.4 Words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not).
- 1.5 Words that are defined in the Companies Act bear the same meaning in this MOI as in that Act.
- 1.6 If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.
- 1.7 If the provisions of this MOI are in any way inconsistent with the unalterable provisions of the Companies Act, the provisions of the Companies Act shall prevail.
- 1.8 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.
- 1.9 When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:
  - 1.9.1 excluding the day on which the first such event occurs;
  - 1.9.2 including the day on or by which the second event is to occur; and
  - 1.9.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.9.1 and 1.9.2 respectively.

## 2. Incorporation

- 2.1 The Institute was incorporated as an Association Incorporated under section 21 of the Companies Act, 1973. The Institute is now a Non-Profit company, with members, in terms of the Companies Act,
- 2.2 The Institute is governed by:-
  - 2.2.1 the unalterable provisions of the Companies Act that are applicable to Non Profit companies;
  - 2.2.2 the alterable provisions of the Companies Act that are applicable to Non Profit companies, subject to any negation, restriction, limitation, qualification, extension, variation or substitution set out in this MOI; and
  - 2.2.3 the provisions of this MOI.

Commented [CS7]: Minor edits here to reflect the organisation's history.

## 3. OBJECT AND POWERS OF THE INSTITUTE

- 3.1 The objects of the Institute are to:-
  - 3.1.1 be the recognised professional body to empower the application of global best practice in the compliance profession.
  - 3.1.2 encourage and promote the inclusion of compliance matters, including but not limited to matters relating to compliance officers, compliance functions, compliance practices and methodologies as appropriate into legislation;
  - 3.1.3 encourage and promote embedding a compliance function through compliance officers;
  - 3.1.4 promote the professional status, image and credibility of its members;
  - 3.1.5 encourage and facilitate forums for the exchange of information and ideas among members/other stakeholders.
  - 3.1.6 stimulate and promote education, training and mentoring in the field of compliance to its members and other stakeholders;
  - 3.1.7 alert members of any developments in legislation;
  - 3.1.8 provide accreditation for compliance professionals;
  - 3.1.9 establish, maintain and promote standards for compliance functions and compliance officers; and
  - 3.1.10 represent members and the compliance profession.

3.1.11

3.2 The object of the Institute is as set out in clause 3 of this MOI, and substantially the whole of the activities of the Institute must be directed to the furtherance of its principal object and not for the specific benefit of an individual member or minority group.

Commented [CS8]: SARS clause: S30B(2)(b)(vi)

3.23.3 The Institute has the powers and capacity of an Individual as envisaged by section 19(1) (b):

3.3.1 provided that these powers may only be exercised in pursuing its stated object;

3.3.2 except to the extent that a juristic person is incapable of exercising such a power or having such a capacity; and

3.3.3 subject to the restrictive conditions and other limitations or qualifications, as are contained in this MOI.

3.4 The powers of the Institute may only be executed in accordance with the main object of the Institute.

3.5 The Institute may not:

3.5.1 grant to any member any direct or indirect personal or private interest in the Institute;

3.5.2 have a share or other interest in any business, profession or occupation carried on by any of its members;

3.5.3 knowingly become a party to, or knowingly permit itself to be used as part of, any tax avoidance scheme, being any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax duty or levy which would have been or become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.

3.5.4 amalgamate or merge with, or convert to, a profit company; or

3.5.5 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that the disposal of an asset occurs in the ordinary course of the activities of the Institute.

Commented [CS9]: SARS clause s30B(2)(b)(v)

Commented [CS10]: SARS clause s30B(2)(b)(vii)

Commented [CS11]: Edited version of s30B(2)(b)(xiii)

3.23.6 The Institute will receive substantially the whole of its funding from its annual or other long-term members, or from appropriations by the government of the Republic in the national, provincial or local sphere.

Commented [CS12]: SARS clause s30B(2)(ix)

#### 4. MEMBERS OF THE INSTITUTE

4.1 As contemplated in Item 4(1) of Schedule 1 of the Act, the Institute has members who are in either of two classes, being voting or non-voting members:

4.1.1 **Voting members** shall be natural persons who have applied for and been recognised by the Institute as voting members in accordance with the procedures in this MOI, and shall each have an equal vote in any matter to be decided by the voting members of the Institute; and

4.1.2 **Non-voting members** shall be natural persons or juristic persons, including for-profit companies, who have applied for and been recognised as non-voting members of the institute.

4.14.2 The Institute shall maintain at its registered office a register of voting and non-voting members of the Institute as required by the Companies Act.

4.24.3 The qualifications and criteria for voting and non-voting membership of the Institute, and the different statuses held by members shall be determined in accordance with a Policy to this effect, developed by the Institute and applied by the Board may, in its sole discretion, determine the criteria to be applied for qualification of membership of the Institute.

Commented [CS13]: As an organisation approved in accordance with section 10(1)(d), the Compliance institute is required to receive substantially the whole of its funds from members. The nature of the transaction is not relevant, only its source being from members/non-members. It is not a requirement that the funds received are from voting members. For that reason, we recommend the Institute recognises a class of non-voting members to allow ad hoc donors/non-member conference attendees to be admitted as non-voting members. It should be noted that membership may not be assumed or compelled.

4.34.4 Membership for a determined period becomes effective subject to the following:

4.3.14.4.1 application in Writing, on the prescribed application form;

4.3.24.4.2 acceptance of the application; and

4.3.34.4.3 payment of the requisite membership fee, which may be different for the different

categories of members.

~~4.4.5~~ The Board may at its discretion appoint a committee (ad hoc or standing) to consider appeals for the rejection of membership applications and approve any directives and/or rules to govern such appeals.

~~4.5.4.6~~ Membership of the Institute is terminated if the member:

~~4.5.4.6.1~~ Dies or, in the case of a juristic person, is wound up;

~~4.5.4.6.2~~ fails to make punctual payment of any amount due to the Institute and despite a written demand or fails to meet the qualifications and criteria for membership as determined by the Institute from time to time;

~~4.5.4.6.3~~ fails to discharge any of the member's obligations to the Institute on due date or fails to comply with any provisions of this MOI, policy, code of conduct or any other regulation issued by the Institute, whether such provision is related to membership or not and is given fair notice, if the Board as a result decides to terminate membership, provided that a member may lodge an appeal to a committee of voting members independent of the Board, to hear such appeals or, in their absence, the body of voting members at a meeting of the members;

~~4.5.4.6.4~~ gives notice to the Institute in Writing of resignation as a member;

~~4.5.4.6.5~~ is sequestrated, surrenders his or her estate, or in the case of a juristic person, voluntary closure, an order for the provisional winding-up of the member is made, or the relevant member enters into Business Rescue proceedings as contemplated in the Companies Act;

~~4.6.6~~ is placed under curatorship; or

~~4.5.6.4.6.7~~ in the case of a natural person, is disqualified from service as a director of a company under the laws of South Africa.

~~4.6.7~~ A member whose membership has been terminated for whatever reason remains liable for all amounts that may be, at the date of termination of membership, due by the member to the Institute.

## **5. RIGHTS OF MEMBERS**

~~4.7~~ Each Member has an equal vote in any matter to be decided by Members.

~~4.8.5.1~~ The rights of members in terms of this MOI are additional to the rights of members under the Companies Act, and the human rights of members as entrenched in the Constitution of the Republic, 1996, including the right against discrimination. ~~Board has regard to each of the Members' rights not to be discriminated against unfairly, as provided in section 9 of the Constitution of the Republic.~~

~~5.2~~ A member may appoint any ~~individual~~ natural person, who is a voting Member of the Institute in good standing, as a proxy to participate in and speak and, where the person appointing the proxy is a voting member, vote, at a General Meeting on behalf of the member provided that:

~~4.8.4.5.2.1~~ The appointment of a proxy shall be in Writing in the format prescribed by the Institute's management and dated and Signed by the appointing member.

~~5.2.2~~ a member must deliver to the Institute a copy of the instrument appointing a proxy 48 hours before that proxy may exercise the member's rights at a members' meeting;

~~4.8.4.5.2.3~~ No form appointing a proxy is valid after the meeting for which it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned General Meeting which could not have been used at the original General Meeting;

~~4.8.4.5.2.4~~ A member of the Institute may not appoint more than one person as a proxy;

~~4.8.4.5.2.5~~ A member's proxy shall not have the authority to further delegate such proxy's powers to another person;

~~5.2.6~~ any member intending to vote by proxy shall have the right to terminate the proxy at any time prior to the commencement of the meeting by lodging with the Institute a written notice terminating the proxy and a proxy shall further be deemed to be ipso facto terminated in the event of the member who granted the proxy being present at the meeting; and

~~4.8.55.2.7~~ a member's proxy may not decide without direction from the member whether to exercise or abstain from exercising any voting right of the member.

~~4.9~~ If, at any time, the Board fails to determine a Record Date, the Record Date for participating in and voting at a General Meeting is the latest date by which the Institute is required to give Members notice of that meeting.

## **6. GENERAL MEETINGS OF MEMBERS: NOTICE, QUORUM AND VOTING**

~~4.106.1~~ The Institute ~~must~~ shall hold an Annual General Meeting within 15 ~~(fifteen)~~ months of the previous Annual General Meeting held.

~~4.116.2~~ The right of members to requisition a General Meeting in addition to the Annual General Meeting, as set out in section 61(3), may be exercised by at least ~~25~~10% of the voting ~~Members~~ subject to the requirements of section 61(3) of the Companies Act, ~~as provided for in that section.~~

~~4.126.3~~ All members who are members in good standing at the time that the notice of the meeting is due to be delivered to the members shall receive notice of all General Meetings. The Institute ~~must~~ shall deliver a notice of each General Meeting (including the Annual General Meeting) at least 15 (fifteen) Business Days before the date of the meeting in the manner and form as prescribed by section 62(3) to all of the members of the Institute in good standing ~~as at the time which the notice is due to be delivered to the members.~~ ~~Record Date for the meeting.~~

~~4.136.4~~ The Board may, in its sole discretion, ~~authority of the Board to~~ determine the location of any General Meeting within the Republic or electronically, ~~and the authority of the Institute to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) is not limited or restricted by this MOI.~~

~~4.146.5~~ At the Annual General Meeting the following matters are dealt with and disposed of:

~~4.14.16.5.1~~ presentation of the Directors' report and audited financial statements for the immediately preceding financial year;

~~4.14.26.5.2~~ the election of non-executive Directors;

~~4.14.36.5.3~~ the appointment of an auditor for the ensuing financial year;

~~4.14.46.5.4~~ any matters placed on the agenda by the Board; and

~~4.14.5~~ any matters raised by the members by delivering to the Board notice of at least five Business Days before the date of the meeting in sufficient detail for inclusion on the Agenda, ~~provided the procedure in clause 6.7.2 has been followed in respect of such matters.~~

~~4.14.66.5.5~~ If a Member wishes to raise a matter to be dealt with at a General Meeting, that Member must give the Board written notice of any such matter at least 5 (five) Business Days before the date of the meeting, setting out in the notice the nature of the matter and reasons in sufficient detail.

~~4.156.6~~ A General Meeting may not begin until at least 25 ~~(twenty five)~~ voting ~~m~~Members are present at the meeting and any matter to be decided at the meeting may not begin to be considered and decided unless at least 25% of the voting ~~(twenty five)~~ ~~m~~Members are present at the meeting at the time the matter is called on the agenda.

~~4.166.7~~ The Chairperson presides as chairperson at every General Meeting of the Institute. If the Chairperson is unwilling or unable to act as chairperson of the General Meeting or is not present within 15 ~~(fifteen)~~ minutes after the time appointed for holding the meeting, the Vice Chairperson shall stand in the Chairperson's stead. If they too are not present, the members shall appoint a Chairperson from their number or from the Directors present. ~~Board members present shall elect one of their number to be chairperson of the meeting.~~

~~4.176.8~~ If within ~~1~~(one) hour from the time appointed for the General Meeting to commence, a quorum is not present, the General Meeting shall be postponed, without motion, vote or

Commented [CS14]: This is a Companies Act provision that will be automatic and does not need to be included in the MOI. We have added in some clarifying wording to the part relating to notice and powers of the members at a meeting

further notice for ~~1 (one)~~ week to the same time and day in the next week or, if that day is not a Business Day, to the next succeeding day which is a Business Day, and if at such adjourned General Meeting a quorum is not present within ~~1 (one)~~ hour from the time appointed for the General Meeting, then the members entitled to vote and present at the meeting shall be deemed to be the requisite quorum.

~~4.186.9~~ At a General Meeting, voting may either be by show of hands, or by polling.

~~4.196.10~~ A polled vote must be held on any particular matter to be voted on at a General Meeting if a demand for such a vote is made by at least ~~25 (twenty five) persons~~ half of the voting members present having the right to vote on that matter.

~~4.206.11~~ If a poll is duly demanded it shall be taken in such a manner as the chairperson directs and the result of the poll shall be deemed to be the resolution of the General Meeting at which the poll was demanded. The chairperson of the General Meeting may appoint scrutineers to determine the result of the poll.

~~4.216.12~~ A poll demanded on the question of adjournment, is taken forthwith. A poll demanded on any other question is taken at such time as the chairperson of the General Meeting directs and no notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the continuation of a General Meeting for the transaction of any business other than the question upon which the poll has been demanded.

~~4.226.13~~ A declaration by the chairperson of the General Meeting that a resolution has been carried together with an entry to that effect in the valid and duly constituted General Meeting's minutes, as approved by the members, is conclusive evidence of the fact, without requiring proof of the number or proportion of the votes recorded in favour of or against such resolution.

~~4.236.14~~ In the event of an equality of votes, the chairperson of the General Meeting has a second or casting vote.

~~4.246.15~~ On ~~exercising a vote a show of hands~~ at a General Meeting, each member who is entitled to vote on a resolution proposed at that meeting and is present by person or by proxy is entitled to ~~1 (one)~~ vote on that resolution.

~~4.25~~ On a poll at a General Meeting ~~each Member who is entitled to vote on a resolution proposed at that meeting and who is present in person or by proxy has 1 (one) vote on that resolution.~~

#### ~~4.26~~ **Members resolutions**

~~4.276.16~~ For an ordinary resolution to be adopted at a General Meeting, it ~~must shall~~ be supported by more than 50% of the voting mMembers who voted on the resolution, ~~as provided in section 65(7).~~

~~4.286.17~~ For a special resolution to be adopted at a General Meeting, it must be supported by at least 75% of the voting mMembers who voted on the resolution, ~~as provided in section 65(9).~~

~~4.29~~ The quorum for both ordinary and special resolutions is as set out in the clause ~~6.7.3.~~

### **5.7. COMPOSITION OF THE BOARD OF DIRECTORS**

~~5.47.1~~ The Board consists of a minimum of ~~4 (four)~~ and a maximum of ~~20 (twenty)~~ 12 Directors, ~~inclusive of ex-officio directors, who, except for ex officio Directors, are elected to office by the voting member. At least three Directors shall not be [connected persons] (as defined in the Income Tax Act) in relation to one [another], included in the number of Directors:~~

~~7.1.1~~ The Chief Executive shall serve ~~as an executive director of the Institute, as an ex officio; and~~

Commented [DS15]: Who could be a connected person at an NPO with members?

Commented [CS16R15]: "Connected persons" are family members related to one another by blood or marriage.

Commented [CS17]: SARS requirement

~~executive Director of the Institute.~~

~~5-1-17.1.2~~ Notwithstanding any other provision in the MOI, ~~the~~ Board may from time to time in its sole discretion identify one other executive ~~manager~~ ~~manager to serve on the board for a term as the Board determines, provided that there may only be one such appointment at any time.~~ ~~position that qualifies for ex officio membership of the Board.~~

7.2 Provided that at least one third of the elected Directors stand for election or re-election by the members each year, and except for *ex officio* Directors and Directors co-opted in terms of 7.1.2:

7.2.1 Directors are appointed for a term of three years, whereafter they shall retire from office; and

~~5-1-27.2.2~~ ~~Directors may serve a maximum of three (3) consecutive terms of office whereafter they shall be required to retire from office for at least one year before they may be considered for appointment or re-election by the members; and provided that one third (1/3) of the non-executive Directors of the Institute retires from office at every Annual General Meeting. If the number of non-executive Directors is not three or a multiple of three, the number nearest to one third (1/3) retires from office.~~

~~5-1-37.2.3~~ where the Board recognises that there is a gap of skills or expertise on the Board, or where the number of Directors falls below the minimum required in accordance with 7.1, the Directors may co-opt additional Directors to the Board to serve until the next Annual General meeting of the Board, where any co-opted Directors shall stand for election by the members.

7.3 If the number of Directors falls below the minimum required by clause 7.1 at any time, the remaining Directors in office shall be empowered to continue to make decisions and govern the Institute, while replacement Directors are appointed to meet the requirements.

7.4 The Directors shall have the power at any time to appoint any other person as a Director either to fill a casual vacancy or as an addition to the Board, subject to subsequent ratification of the appointment by the members at the next Annual General Meeting.

7.5 The office of a director shall ipso facto be vacated if:

7.5.1 the director's term of office ends and they are not or may not be re-elected or re-appointed to office;

7.5.2 by written notice to the Institute, the director resigns from office;

7.5.3 the director ceases to be eligible to be a director by virtue of the Act;

7.5.4 the director is a director *ex officio* and ceases to occupy the relevant position or office, unless the remaining Directors decide otherwise;

7.5.5 the director was an executive or manager co-opted by the board in accordance with 7.1.2 and the board resolves by ordinary resolution that the director's function or insight is no longer required;

7.5.6 the director is directly or indirectly interested in any contract or proposed contract with the Institute, and fails to declare their interest and the nature thereof in the manner required by the Act;

7.5.7 the director fails to attend three scheduled meetings of the Board without prior apologies; or

~~5-1-47.5.8~~ the director is removed from office in accordance with section 71 of the Act.

## **8. NOMINATION AND ELECTION OF DIRECTORS BY THE MEMBERS**

~~5-28.1~~ Once a year, in good time before the expiry of terms of office of the relevant Directors, electronic notification shall be issued to members indicating which Directors' terms will end, which may be elected for a further term of office and if any other of the Directors has ceased or will cease to serve. The notice shall include a call for nominations and be ~~Prior to the Annual General Meeting, the Board by notice to Members calls for the nomination of candidates~~ in the manner and in the form prescribed by the Board, provided that only fully paid-up voting members shall be entitled to nominate candidates and no individual member can nominate him or herself. A shortlist of nominated candidates shall be prepared ~~is recommended~~ by a committee appointed by the Board for that purpose, considering the skills, knowledge, experience and diversity requirements of the Board, and presented to the

**Commented [CS18]:** This phrasing is a misinterpretation of the Companies Act provisions in this regard. We have adjusted the phrasing to capture the nature of the 1/3 retiring requirement.

**Commented [CS19]:** The Companies Act provides for removal of directors by the members, but following a proper procedure. Removal of directors by the rest of the board is only permitted on limited grounds, and must also follow proper procedure.

~~members in the notice of for decision by the Board in its sole discretion for recommendation to Members for election at the Annual General Meeting as a matter to be decided by the voting members. In determining such shortlist the committee appointed by the Board for that purpose follows due and fair process and takes into account the skills, knowledge, experience and diversity requirements of the Board. The voting members shall elect or re-elect Directors as required, at the Annual General Meeting.~~ Candidates absent from the Annual General Meeting are not eligible without having rendered prior apologies to the Institute in advance of the meeting together with sound reasons for absence.

~~5-38.2~~ The Board ~~shall distribute~~ ~~includes in the notice of the Annual General Meeting~~ the names of the short- listed candidates, together with their curricula vitae and such further information as the Board deems necessary to enable ~~voting m~~Members to exercise an informed vote ~~within 14 days of the Annual General Meeting.~~

~~5-48.3~~ Only nominations in accordance with the process of 8.1 shall be considered for election by the members at the Annual General Meeting. ~~The nomination of candidates by Members is subject to 7.4.4 and no nominations by Members made outside the set process are allowed.~~

~~5-58.4~~ Notwithstanding that it may afterwards be discovered that there has been some defect in the appointment or continuance in office of a Director or person acting as a Director, bona fide decisions by the Board or by any person acting in good faith as a Director of the Institute are as valid as if every such person had been duly appointed, were qualified and continued to be a Director or were entitled to vote, as the case may be.

## **6.9. POWERS, AUTHORITY, AND DUTIES OF DIRECTORS**

~~6-49.1~~ The authority of the Board to lead and direct the business and affairs of the Institute, as set out in section 66(1) is limited to the extent that the powers of the Institute are limited in this MOI;

~~6-1-49.1.1~~ In accordance with legal requirements, each of the Directors shall exercise their powers:

~~6-1-29.1.2~~ in good faith and for the purpose for which they were conferred;

~~6-1-39.1.3~~ in the best interests of the Institute; and

~~6-1-49.1.4~~ with the degree of care, skill and diligence that may reasonably be expected of a person:

~~6-1-4-49.1.4.1~~ carrying out the functions of a director; and

~~6-1-4-29.1.4.2~~ having the general knowledge, skill and experience of that director.

~~6-29.2~~ The Board may delegate any of its powers to Board appointed committees consisting of such Board members or other persons as it deems fit.

~~6-39.3~~ Each Board committee must have a terms of reference approved by the Board dealing with its composition; role and purpose; functions; delegated authorities; tenure; meeting requirements and procedures and reporting mechanism to the Board.

~~6-49.4~~ The Board or appropriately empowered committee of the Board may delegate to management of the Institute any of its powers upon such terms and conditions as is deemed fit.

## **7-10. PROCEEDINGS AND MEETINGS OF THE BOARD**

~~10.1~~ The Board may, ~~for the dispatch of business:~~

~~10.1.1~~ meet in person or via any electronic communication;

~~10.1.2~~ ~~for the dispatch of business,~~ adjourn and otherwise regulate their meetings at such times and places as it thinks fit; ~~or~~

~~7-1-410.1.3~~ Consider a matter other than at a meeting and, instead of voting at a meeting, adopt a decision by written consent of all Directors, and a decision so made shall have the same effect as if it had been approved at a meeting. ~~The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic~~

Commented [CS20]: The power will be limited to the extent that the MOI and SARS requirements require.

~~communication, as set out in section 73(3) is not limited or restricted by this MOI.~~

10.2 The Board shall schedule their meetings in advance, by discussion and agreement at meetings of the Board. Additional or unplanned meetings of the Board may be called upon the written request of two Directors OR, where the Board exceeds 12 Directors in total, 25% of the Directors

10.3 ~~The Board may determine the authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this MOI,~~ provided that:

10.3.1 ~~t~~he minimum period of notice required to call a Board meeting is 10 business days from the date on which the notice is issued; and

~~7.1.2~~10.3.2 the notice shall specify the date, time and place of the meeting and the general nature of the business to be discussed.

10.4 ~~The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) is not limited or restricted by this MOI.~~The Board may proceed with a meeting despite a failure or defect in giving notice of the meeting, if all the Directors of the Institute.

10.4.1 acknowledge actual receipt of the notice;

10.4.2 are present at a meeting; or

10.4.3 waive notice of the meeting.

7.2 The Board may act notwithstanding a vacancy, but, if and for as long as its number is below the minimum required in terms of this MOI, the continuing Directors may only act for the purpose of increasing the number of Directors to the minimum number, or for convening a General Meeting of the Institute.

7.3 ~~The right of Directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by at least 25% of the Directors.~~

10.5 The rules for Directors' meetings are as follows:

10.5.1 the Directors shall meet together not less often than four times per year for the dispatch of business but shall otherwise regulate their meetings as they think fit;

7.3.1 The quorum necessary for the transaction of the business of the Board is a majority of the number of Directors in office, provided that the majority of the Directors present are non-executive Directors;

10.5.2

10.5.3 the Directors will endeavour to govern by consensus, but where consensus cannot be reached a vote will be taken and, except as otherwise provided in this document, a majority of the votes cast on a resolution will be sufficient to approve that resolution;

10.5.4 Except where a director has a conflict of interests as provided for in terms of clause 10.8, Questions arising at any meeting are decided by a majority of votes and. Each Director has one vote on a matter before the Board; and

10.5.5 -In the event of an equality of votes, the Chairperson of the meeting shall have a second or casting vote.

10.6 The Board ~~must~~shall elect a Chairperson from among the non-executive Directors and determine the period for which the Chairperson is to hold office. The Chairperson shall preside over all meetings of the Board and perform the tasks set out in this MOI and all of the other usual functions of a Chairperson of the Institute. If at any meeting the Chairperson is not present within five minutes after the time appointed for holding the same, the Directors present may elect one of their number to chair the meeting.

10.7 ~~must~~At the first Board meeting of each year or at the first Board meeting that the Director attends, all Directors shall complete an interest declaration in the format agreed by the

Commented [CS21]: Rephrased to capture the essence of the Companies Act provisions on this and some good governance guardrails

Commented [CS22]: We have adjusted this to accommodate the Companies Act requirements and a more pro-active approach to calling meetings.

Commented [CS23]: Not a legal requirement but a recommendation

Board and submit the forms to the Chairperson. For the purposes of this MOI, a conflict of interest is any situation where a Directors' personal interests, financial interests or interest they owe to another person or body may influence a Directors' decision making in a matter of the Institute. The Chairperson shall facilitate a discussion by the Directors of any conflicts declared and:

10.7.1 each Director who declares a conflict shall absent themselves from the meeting during the time that the conflict is discussed by the other Directors;

10.7.2 the other Directors shall consider whether the extent and nature of the conflict is adequately dealt with by the relevant director following the procedure in ~~10.8~~~~10.10~~ OR whether the Director should be requested or required to leave office for the duration of the conflict of interest; and

10.7.3 the minutes shall note the conflicts declared and decisions made by the Directors.

10.8 If a matter in which any director (or any person in relation to whom a director is a 'connected person' (as defined in the Income Tax Act)) has conflict of interests as described in ~~10.7~~~~10.8~~ is placed upon the agenda of a meeting or arises during the course of meetings or correspondence of Directors the relevant director shall:

~~7.4~~

~~7.5~~ Subject to the provisions of section 75, in respect of Directors' conflicts of interests:

~~7.5.1~~ All Directors

~~7.5.2~~ At every Board meeting immediately and in advance of the matter being dealt with, disclose the fact and nature of the declaration of conflict of interest must be made in the manner and form agreed by the Board in regard to all items for consideration before the Board or -

10.8.1 inform the relevant meeting or electronic communication group or email mailing list of material information and answer questions concerning the personal financial interest;

~~7.5.3~~10.8.2 A Director may not vote in respect of any matter tabled at the Board in which the Director has a material interest, or on any matter arising therefrom and if a vote is exercised contrary to this, the vote is not counted matter would need to be tabled again without the influence of the director in order to be valid;-

~~7.5.4~~10.8.3 The Director must not take part in the consideration of the matter and leave the meeting immediately after making the required disclosure.

~~7.6~~10.9 While being absent from the meeting in terms of Clause 10.8, the Director:

~~7.6.1~~10.9.1 will be regarded as being present for the purpose of determining whether a sufficient number of Directors are present to constitute a quorum; and

~~7.6.2~~10.9.2 will not be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted.

10.10 The Institute shall keep minutes of the meetings of the Board, and any of its committees, and include in the minutes:

10.10.1 any declaration given by notice or made by a director as required by section 75 with reference to the personal financial interests of the director, whether it be an advance declaration of interests, or a specific declaration with reference to a specific matter; and

10.10.2 every resolution adopted by the Board, which resolutions shall be dated, sequentially numbered, and will be effective from the date of the resolution, unless the resolution states otherwise.

10.11 Copies of the minutes of every meeting shall be dispatched by the person appointed by the Board from time to time, to all Directors within two weeks of the next meeting of the Board.

## 8.11. ACCOUNTING RECORDS, BANKING, AND USE OF RESOURCES

11.1 The Directors shall cause accurate and complete records to be kept which enable the Institute to satisfy all legal requirements and prepare financial statements and will comply with the reporting requirements as may be determined by the Commissioner from time to time.

Commented [CS24]: S10(1)(d) clause

~~8.1~~ The Board causes accounting records as required by section 28 to be kept.

11.2 The accounting records shall be securely stored and accessible to the Directors from the registered office of the Institute through any method or platform as the Directors agree from time to time.

11.3 The accounting records shall be securely stored ~~are kept~~ at the registered office of the Institute or at such other place or places as the Board decides, and are always open for inspection by the Directors.

~~8-211.4~~ The financial transactions of the Institute shall be administered via one or more bank accounts which shall be opened in the name of the Institute.

Commented [CS25]: NPO requirement if ever required

~~8-311.5~~ The Board determines from time to time whether, to what extent, at what times and places and under what conditions the accounting records of the Institute shall be open to inspection by Members, and no member has any right to inspect any accounting records or documents of the Institute except as conferred by the Companies Act and/or other applicable legislation.

11.6 The Board, in accordance with the Companies Act, ensures the preparation and tabling at the Annual General Meeting, as a minimum, the matters referred to in clause 6.5 and performs all duties in relation to annual financial statements, accounting records and auditors in accordance with the Companies Act and other applicable legislation. A copy of the annual financial statements which are to be tabled at the Annual General Meeting, is sent to every Member not less than 15 (fifteen) Business Days before the date of the meeting.

11.7 The income and property of the Institute, however derived, shall be applied solely towards the promotion of its main object (and not for the specific benefit of any individual member or minority group) or invested and no funds will be distributed to any person other than in the course of undertaking of its object and no portion of the income or assets of the Institute may be paid or transferred, directly or indirectly, to the Directors or persons appointing Directors of the Institute; provided that this shall not prevent:

Commented [CS26]: This is a combination of the Companies Act requirements and those of SARS from s30B(2)(b)(iv) and (iii)

11.7.1 the payment in good faith of reasonable remuneration to any officer or servant of the Institute, for any services rendered to the Institute;

11.7.2 payment of an amount due and payable by the Institute in terms of a bona fide agreement between the Institute and that person or another;

11.7.3 payment in respect of any rights of that person, to the extent that the rights are administered by the Institute in order to advance a stated object of the Institute; or

11.7.4 payment in respect of any legal obligation binding on the Institute.

11.8 Remuneration (as defined in the Fourth Schedule to the Income Tax Act) may be paid to any employee, office bearer, director or other person in keeping with clause ~~Error! Reference source not found.~~ 14 and the policy of the Institute from time to time provided that:

11.8.1 no remuneration may be paid if it is excessive, having regard to what is generally considered reasonable in the appropriate sector and in relation to the service rendered;

Commented [CS27]: SARS clause s30B(2)(b)(viii)

11.8.2 no person shall be economically benefitted in any way which is not consistent with the objects of the Institute;

11.8.3 no remuneration or payment may be calculated as a percentage of the value of turnover, surplus or net revenue of the Institute;

11.8.4 remuneration shall be determined within the range and scales as established by the Institute from time to time;

11.8.5 no employees or officers shall be granted entitlement to ownership of intellectual property

- belonging to the Institute;
- 11.8.6 bonus payments are only permissible as part of a structured salary package;} and
- 11.8.7 the provisions of clause 10.8 shall apply to any decision taken regarding remuneration for Directors, officers or their connected persons;
- 11.9 The Institute shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a director of the Institute or of a related or inter-related Institute, or to a person related to any director, unless it:
- 11.9.1 is in the ordinary course of the Institute’s business and for fair value;
- 11.9.2 constitutes an accountable advance to meet:
- 11.9.3 legal expenses in relation to a matter concerning the Institute; or
- 11.9.4 anticipated expenses to be incurred by the person on behalf of the Institute;
- 11.9.5 is to defray the person’s expenses for household and furniture removal costs if changing the area in which they reside at the Institute’s request; or
- 11.9.6 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.
- 8-411.10 No expenditure shall be incurred by or on behalf of the Institute except on authority of the Board or of the person or persons to whom the Board has generally or specifically delegated the power to authorise expenditure.

**Commented [CS28]:** These are not part of the SARS requirements but added for clarity and guardrails.

**Commented [CS29R28]:** These are not necessary to state but we do so for educational purposes.

**Commented [CS30]:** SARS requirement

**Commented [CS31R30]:** These are not necessary to state but we do so for educational purposes.

## **9.12. NOTICES TO MEMBERS**

- 9-412.1 If a manner of delivery of a document, record, statement or notice is prescribed in terms of this MOI or the Companies Act:
- 9-1-412.1.1 it is sufficient if the person required to deliver such a document, record, statement or notice does so in a manner that satisfies all of the substantive requirements as prescribed; and
- 9-1-412.1.2 any deviation from the prescribed manner does not invalidate the action taken by the person delivering that document, record, statement or notice, unless the deviation-
- 9-1-412.1.3 materially reduces the probability that the intended recipient will receive the document, record, statement or notice; or
- 9-1-412.1.4 is such as would reasonably mislead a person to whom the document, record, statement or notice is, or is to be, delivered.
- 9-212.2 If, in terms of this MOI or the Companies Act, a notice is required or permitted to be given or published to any person, it is sufficient if the notice is transmitted electronically directly to that person in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.
- 9-312.3 Any notice, document or statement sent in terms of this MOI or the Companies Act shall be deemed to have been delivered on the date and time determined in accordance with Table CR3 in the regulations in terms of the Companies Act.

## **13. ANNUAL FINANCIAL STATEMENTS AND RETURNS**

- 13.1 The Directors shall, in accordance with sections 29 and 30 of the Act, cause to be prepared and laid before the members of the Institute the annual financial statements which shall:
- 13.1.1 be prepared no longer than six months after the end of each financial year;
- 13.1.2 if audited, include an auditor’s report;
- 13.1.3 include a report by the Directors as to the activities and financial state of the Institute; and
- 13.1.4 be approved by the Directors of the Institute and signed by an authorised director.
- 13.2 A copy of the annual financial statement shall, at least 15 business days prior to the relevant meeting, be sent to every member of the Institute.
- 13.3 The Institute shall file annual returns:
- 13.3.1 annually with the Commission within 30 business days of each anniversary of its date of incorporation; and
- 13.3.2 for income and other taxes as required with the Commissioner for South African Revenue

**Commented [CS32]:** We intentionally make no mention of the voluntary audit in the MOI, as the directors are always free to choose to audit if they would like this, or the law can take its course and the compulsory audit will kick in when the organisation PI Score is high enough. In absence of an audit, an independent review is required.

Services,

9.3.413.3.3 along with the payment, documents and information which may be required from time to time.

#### ~~10.14.~~ **RULES AND AMENDMENT OF THE MOI AND RULES**

~~10.2.14.1~~ The Board may make, amend or repeal any necessary or incidental Rules relating to the governance of the Institute by publishing a copy of these Rules and by sending notice thereof by registered post (to any address, within the Republic supplied by the member to the Institute) or by electronic transmission (to any electronic address supplied by the member to the Institute) to each of the members and by filing a copy of the Rules with the Commission. Any Rules published in this manner take effect on the date specified in that rule and shall be subject to ratification by the members as set out in section 15(4)(c)(ii).

~~10.2.14.2~~ The Board may propose to amend any of the provisions of this MOI and the members may by way of special resolution adopt such amendments provided that:-

~~10.2.14.2.1~~ A notice of the proposed alterations of the MOI shall be sent to each member by registered mail or by electronic transmission at least 15 (fifteen) Business Days before the meeting at which the special resolution to amend the provisions of the MOI is to be passed.

~~10.2.214.2.2~~ No amendments to the MOI shall be made which will:-

~~10.2.214.2.2.1~~ allow any income or other funds or other assets of the Institute to be applied for a purpose which does not promote the achievement of the objects of the Institute or

~~10.2.214.2.2.2~~ amend this clause 4.6 in any manner which would give any proprietary or similar interest in the Institute's income or other funds or other assets to any individual or any incorporated entity contrary to the provisions of the Income Tax Act.

~~10.314.3~~ The Board shall ensure that a copy of any amendments that have been made to the MOI have been provided to the Commissioner for the South African Revenue Service within 30 days of having effected such amendments, and, if the Institute is registered as a Non-Profit Organisation, a copy of any amendments shall be sent to the Directorate of Non-Profit Organisations.

#### ~~11.15.~~ **DISSOLUTION OF THE INSTITUTE**

~~11.15.1~~ The Institute shall be dissolved by a special resolution to be effected by the voting M members. Upon the dissolution of the Institute, the Board shall, after making provision for the liabilities and obligations of the Institute and the costs of dissolving the Institute, distribute the whole of the Institute's income (including distributed income still in its possession) and assets to another entity or entities which is/are:

~~15.1.1~~ non-profit;

~~15.1.2~~ Have objects similar to the Institute's main object; and

~~11.1.115.1.2.1~~ another entity approved by the Commissioner of the South African Revenue Service in terms of section 30B of the Income Tax Act; or

~~11.1.1215.1.2.2~~ a public benefit organisation approve in terms of section 30 of the Income Tax Act to be determined by the Directors at or before the time of dissolution or failing such determination by the Court;

~~11.1.215.1.3~~ any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity; or

~~11.1.3~~ any department of state or administration in the national or provincial or local sphere of Government of South Africa.

~~11.215.2~~ No past or present member or Director shall be entitled to any part of the net value of the Institute after the liabilities and obligations contemplated in clause 10.1 have been satisfied.

**Commented [CS33]:** Generally speaking, registered Rules are not appropriate for non-profits as they are administratively burdensome to maintain (on record with CIPC). Non-registered rules are as valid and binding. If you find a benefit in registering your rules, and you have the administrative capacity to maintain them, we can leave the clauses related to rules in this MOI.

**Commented [CS34]:** If the org ever requires NPO status

**Commented [CS35]:** Income Tax Act s30B(2)(b)(x) slightly edited (to exclude government)