

Norton Rose Fulbright South Africa Inc

Memorandum of incorporation

of

The Association for the Advancement of Black Accountants of Southern Africa NPC

Norton Rose Fulbright South Africa Inc

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# Memorandum of Incorporation of The Association for the Advancement of Black Accountants of Southern Africa NPC

## 1 Definitions and interpretation

1.1 In this Memorandum of Incorporation:

- (1) a reference to a section number refers to a section of the Act;
- (2) unless inconsistent with the context, words that are defined in the Act bear the same meaning in this Memorandum of Incorporation;
- (3) the headings to the clauses are for reference purposes only and do not affect the terms of this Memorandum of Incorporation.

1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- (1) **Act** means the Companies Act, 2008, as amended, together with any regulations published in terms thereof;
- (2) **Annual General Meeting** means a meeting to be initially held, no more than 18 months after the Association date of incorporation, and thereafter once every calendar year, but no more than 15 months after the date of the previous annual general meeting;
- (3) **Aspiring Accountant** means any member who is currently pursuing their undergraduate or postgraduate studies with the aspiration of practising as an accountant.
- (4) **BBBEE** means the Broad-Based Black Economic Empowerment
- (5) **Black** means Africans, Indians and/or Coloured;
- (6) **Board** means the board of directors of the Company, as appointed at the Elective Annual General Meeting (AGM);
- (7) **Branch** means any branch of the Company which is established or recognised by the Company, and managed by the Branch Executive Committee established pursuant to clause 5.8, to manage the affairs of the Company and to carry out the Objects of the Company in a particular jurisdiction;
- (8) **Branch Chairperson** means responsible person of the branch. Chairs the meetings and reports to the National Board.
- (9) **Branch Executive Committee** means the elected leaders of each Branch comprised of Members
- (10) **Chairperson** means the National Chairperson of the organizational structure of the Association.
- (11) **Code of Conduct** means the code of conduct of the Association approved by the Board from time to time;
- (12) **Codes** means the Codes of Good Practice on Black Economic Empowerment as promulgated under the BBBEE Act, as amended or replaced from time to time;
- (13) **Commission** means Companies and Intellectual Property Commission;

- (14) **Commissioner** means the Commissioner for the South African Revenue Service
- (15) **Company** means the Association for the Advancement of Black Accountants of Southern Africa, a non-profit company (registration number: 2016/358054/08), incorporated in accordance with the company laws of the Republic;
- (16) **Co-opted members** means directors that were appointed after an elective conference by the Board in order to assist the Board in filling vacant positions or to assist in performing other duties required within the Board.
- (17) **Director** means a member of the Board and the alternate Directors thereof;
- (18) **Income Tax Act** means the Income Tax Act, 1962, as amended, together with any regulations published in terms of it;
- (19) **Member in Good-standing** means a Member which has paid all fees and levies due to the Company and has not done anything in contravention of the Company's rules and Objects;
- (20) **Members** means a Person who holds Membership in, and specified rights in respect of, the Company and who is registered as such in the Company's members register;
- (21) **Membership** means any Person who is at that time a Member in Good-standing and is registered as a member in the Company;
- (22) **Membership Policy Document** means a document determined by the Board from time to time in relation to the governance of each of the classes of Members;
- (23) **National Council** means the Advisory Body to the Board of Directors.
- (24) **Objects** means the objects set out in clause 2.3;
- (25) **Ordinary Resolution** means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution;
- (26) **Person** means any person company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- (27) **Professional Accountant** means any accountant that is currently qualified to practice as an accountant and is registered with a recognised professional accounting body;
- (28) **Republic** means the Republic of South Africa;
- (29) **Reserved Matters** means those matters referred to in clause 6
- (30) **Secretary** means person responsible for the Secretariat functions of the organisation
- (31) **Special Resolution** means a resolution adopted with the support of at least 75% members that have voting rights exercised on the resolution
- (32) **Student Chapter Body** means a student representative council, student affairs unit or any other similar entity dealing with the affairs of students at an educational institution.
- (33) **Treasurer** means person responsible for the accounting recording of the organisation.
- (34) **Voting Rights** means the rights of a General Member in Good-standing to vote.

1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Memorandum of Incorporation.

1.4 Unless inconsistent with the context, an expression which denotes:

- (1) any gender includes the other genders; and
- (2) the singular includes the plural and vice versa.

1.5 The schedules to this Memorandum of Incorporation, if any, form an integral part hereof and words and expressions defined in this Memorandum of Incorporation shall bear, unless the context otherwise requires, the same meaning in such schedules.

1.6 When, in this Memorandum of Incorporation, a number of business days is provided for between the happening of one event and another, the number of days must be calculated by:

- (1) excluding the day on which the first such event occurs;
- (2) including the day on or by which the second event is to occur; and
- (3) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.6(1) and 1.6(2), respectively.

1.7 Where any term is defined within the context of any particular clause in this Memorandum of Incorporation, 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 same meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that that term has not been defined in this interpretation clause.

## **2 Incorporation and nature of the company**

### **2.1 Incorporation**

- (1) The Company is incorporated as from 18 August 2016 as a non-profit company.
- (2) The Company is constituted subject to:
  - (a) the unalterable provisions of the Act;
  - (b) any provisions imposing on the Company a higher standard, greater restriction, longer period or any similar more onerous requirement, than would otherwise apply to the Company in terms of an unalterable provision of the Act;
  - (c) the alterable provisions of the Act, subject to the limitations, extensions, restrictions, variations or substitutions set out in this Memorandum of Incorporation; and
  - (d) the provisions of this Memorandum of Incorporation.

### **2.2 Powers of the Company**

- (1) This Memorandum of Incorporation does not:
  - (a) contain any restrictive conditions applicable to the Company and any requirement, in addition to the requirements set out in clause 2.3, for the amendment of any such conditions; and
  - (b) prohibit the amendment of any particular provision hereof.

(2) The Company has all the legal powers and capacity of an individual, to the extent possible, subject to any restrictions, limitations or qualifications arising from this Memorandum of Incorporation.

(3) The income, property and assets of the Company, however derived, shall be applied solely towards the promotion of its stated Objects as set out in this Memorandum of Incorporation, and no portion thereof shall be paid or transferred directly or indirectly or otherwise howsoever, to the Directors of the Company, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or employee of the Company, for any services rendered to, or expenses incurred on behalf of, the Company.

(4) The Company shall not use its resources directly or indirectly to advance, support or oppose any political party.

## **2.3 Objectives of the Company**

### **Historical objectives**

ABASA was established in 1985 to promote the professional interests of Black persons engaged in the accounting profession. ABASA is committed and dedicated in this pursuit and are driven by the need to ensure that every *black accountant* and *aspiring accountant* is able to realize their full potential and aspirations.

### **Current objectives:**

- 1) ABASA exists to develop black (i.e. ACI: Africans, Coloured and Indian) professional accountants and aspiring accountants in order for them to meaningfully lead and participate in the economy and thereby advance the growth and development objectives of the African continent.
- 2) The following is the clear mandate of the organization:
  - a. It exists for all black *professional accountants* and *aspiring accountants* and not only Chartered Accountants
  - b. It exists to contribute towards *addressing the challenges that limit access* to the Accounting profession for black students at school and University level
  - c. It exists to contribute towards *addressing challenges faced by professional accountants and aspiring accountants* in the profession/workplace
  - d. It exists to ensure that beyond access, black professional accountants are capacitated to *meaningfully participate in the economy and ultimately drive economic growth and socio-economic development* in Southern Africa and for the continent at large.

## **2.4 Memorandum of Incorporation and Company rules**

(1) This Memorandum of Incorporation of the Company may be altered or amended by a special resolution by the Directors;

(2) An amendment contemplated in clause 2.4(1) may take the form of:

(a) a new Memorandum of Incorporation in substitution for the existing Memorandum of Incorporation; or

(b) one or more alterations to the existing Memorandum of Incorporation by:

(i) changing the name of the Company;

(ii) deleting, altering or replacing any of its provisions;

(iii) inserting any new provisions; or

(iv) making any combination of such alterations.

(3) After amending its Memorandum of Incorporation, the Company must file a Notice of Amendment with the Commission in accordance with the requirements contemplated in sections 16(7) and (8).

(4) An amendment to this Memorandum of Incorporation takes effect:

(a) in the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or

(b) in any other case, on the later of:

(i) the date on, and time at, which the Commission accepts the filing of the Notice of Amendment; or

(ii) the date, if any, set out in the Notice of Amendment.

(5) The Board has authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in this Memorandum of Incorporation or the Act by filing a copy of those rules, or any amendment or repeal thereof, with the Commission.

(6) Any necessary or incidental rules made, amended or repealed as contemplated in clause 2.4(5):

(a) take effect on the later of:

(i) ten business days after the rule is filed with the Commission; or

(ii) the date, if any, specified in the rule.

## **2.5 Alterations of Memorandum of Incorporation and Company rules, translations and consolidations of Memorandum of Incorporation**

(1) The Board may alter the Company's rules, or its Memorandum of Incorporation, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar

or similar defect on the face of the document, by filing a notice of the alteration with the Commission.

(2) At any time after having filed its Memorandum of Incorporation with the Commission, the Company may file one or more translations of it, in any official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the Person who made the translation, stating that it is a true, accurate and complete representation of the Memorandum of Incorporation.

(3) At any time after having filed its Memorandum of Incorporation with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, provided that every such consolidated revision filed with the Commission in terms of clause 2.5(3) must be accompanied by:

(a) a sworn statement by a Director; or

(b) a statement by an attorney or notary public,

stating that it is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as altered or amended up to the date of the statement.

## **2.6 Application of optional provisions of the Act**

The Company, as a non-profit company, does not elect to comply voluntarily with the extended accountability requirements contained in Chapter 3 of the Act.

## **2.7 Non-profit company provisions**

(1) The Company is a non-profit; and

(a) must apply all of its assets and income, however derived, to advance its stated Objects, as set out in this Memorandum of Incorporation; and

(b) subject to clause 2.7(1)(a) may:

(i) acquire and hold securities issued by a profit company; or

(ii) directly or indirectly, alone or with any other Person, carry on any business, trade or undertaking consistent with or ancillary to the Company's stated Objects.

## **2.8 Public benefit organisation provisions**

(1) For so long as the Company is a non-profit company:

(a) the Company will comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the organisation are directed in the furtherance of its Objects;

(b) the Company will submit to the Commissioner a copy of this Memorandum of Incorporation and in terms of this clause 2.8(1)(b) it is:

(i) required to have at least three Persons, who are not connected Persons in relation to each other, to accept the fiduciary responsibility of the Company and no single Person directly or indirectly controls the decision-making powers relating to the Company;

(ii) prohibited from directly or indirectly distributing any of its funds to any Person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established;

(iii) a public benefit organisation contemplated in paragraph (a)(i) of the definition of "public benefit organisation" in section 30(1) of the Income Tax Act, required on dissolution to transfer its assets to any public benefit organisation which has been approved in terms of section 30 of the Income Tax Act which is, inter alia, required to use those assets solely for purposes of carrying on one or more public benefit activities;

(iv) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform

to the designated purposes and conditions of the donation, including any misrepresentation with regard to the tax deductibility of the donation in terms of section 18A of the Income Tax Act and no donor may impose conditions which could enable that donor or any connected Person in relation to that donor to derive some direct or indirect benefit from the application of that donation; and

(v) required to submit to the Commissioner a copy of any amendment to this Memorandum of Incorporation;

(c) the Company is not, has not been and will not be knowingly a party to, or permit itself to be used as part of 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, but for such transaction, operation or scheme, would have been or would have become payable by any Person under the Income Tax Act or any other Act administered by the Commissioner;

(d) the Company has not and will not pay any remuneration, as defined in the Fourth Schedule, to any employee, office bearer, Member or other Person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any Person in a manner which is not consistent with its Objects;

(e) the Company will comply with such reporting requirements as may be determined by the Commissioner; and

(2) the Company has not and will not use its resources directly or indirectly to support, advance or oppose any political party. To the extent that the provisions of any of the Company's Memorandum of Incorporation conflict with the provisions of this clause, the provisions of this clause shall prevail over such conflicting clause.

### **3 Members**

#### **3.1 Membership**

- (1) Membership of the Company shall be limited to any Person falling into one of the classes of Members who shares and complies with the Objects of the Company.
- (2) Members may be any Person including natural Persons, companies or other bodies corporate, or statutory bodies, partnerships or associations of Persons.
- (3) No Person shall be admitted as a Member unless such Person has agreed in writing to be bound by the terms and conditions of this Memorandum of Incorporation.
- (4) An application for Membership in the Company shall be made to the Board, or a Person appointed for this purpose by the Board, in writing and in the form prescribed by the Board from time to time.
- (5) The Board shall determine procedures for the admission of Members.
- (6) The Board has the authority in its sole discretion to reject any application for Membership.
- (7) Once an application for Membership has been approved by the Board, or by a Person appointed for such purpose by the Board, the applicant shall immediately:
  - a) become a Member of the Company and of the Branch in the jurisdiction in which, in the case of natural Members, resides and in the case of juristic persons, where it has its principal place of business. In the event there is no Branch in the jurisdiction where the Member resides or has its principal place of business, such Member will be a Member of the Branch closest to where such Member resides or has its principal place of business,
  - b) become entitled to its respective benefits and privileges of Membership to the Company;
  - c) subject to clause 3.10(2) where applicable, become liable for all payments, fees and subscriptions due for the year in which it is accepted; and
  - d) be bound by Memorandum of Incorporation.
- (8) Applicants for Membership and Members shall disclose such information as reasonably and equitably requested by the Board from time to time and under appropriate and clearly defined conditions of confidentiality.
- (9) Any applicant whose application for Membership has been rejected shall not be entitled to seek admission again within [2 (two)] years from the date on which it application for Membership was rejected unless request for readmission within such period has been condoned by the Board.

### 3.2 Classes of Membership

(1) The Company shall have four classes of Members namely:

- a) **General Member**, being a natural Person who is engaged in public, private, or government accounting or in teaching accounting who has obtained a recognised qualification from a bona fide tertiary institution and are recognised by a professional accounting body;
- b) **Student Member**, being a student who is in possession of an approved matriculation exemption certificate or equivalent thereof, and who shall at the time of application for Membership, be a registered candidate pursuing studies leading to a degree (or equivalent) relevant to the accounting industry, at a bona-fide tertiary education establishment; and
- c) **Corporate Member**, means a juristic entity which is interested in furthering or offering support in the furtherance of the Company's Objects including promoting the advancement of Black Accountants in the industry and which, in addition, is motivated to support the activities of the Company and to appropriate the benefits derived therefrom,
- d) **Associate member**, means those who do not qualify for admission as general members may qualify for admission as associate members if they support the aims and objectives of the Association and are actively engaged in promoting accounting among Black South Africans, but who shall not have a right to vote.

each of whom shall be bound by this Memorandum of Incorporation and the Membership Policy Document. The fee payable by each class of membership will not be uniform and it will be determined and expressed in the Membership Policy Document as approved by the Board.

### 3.3 Rights and obligations of Members

- (1) The rights and obligations of a Member shall not be transferable, and every Member shall:
- a) further the Objects and interests of the Company to the best of their ability; and
  - b) have the rights and obligations set out in this Memorandum of Incorporation and in addition shall have the rights and obligations set out in the Membership Policy Document.

### 3.4 Cessation or suspension of Membership

(2) A Members' Membership shall terminate:

- a) upon receipt by the Board or its delegated authority of a notice in writing to this effect from the Member concerned;
- b) upon the issue of a final order of sequestration or winding up of the Member concerned;
- c) upon the death of a Member;
- d) Membership in the event of non-compliance by a Member with any obligations as may attach to their Membership, upon the expiration of a period of 3 (three) months reckoned from the date of written notice by:

(i) the Board;

(ii) Branch;

(iii) or the Person authorised by the Board to do so,

to the Member concerned requiring the remedying of such default, unless such default is remedied; save that the Board, Branch or the Person duly authorised shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate; upon the passing of a resolution by the Directors of the Company to this effect;

(f) upon the failure of a Member to uphold the Objects of the Company;

(g) upon the failure of a Member to abide by the Code of Professional Conduct and Code of Ethics as prescribed in the accounting profession (such as but not limited to the IFAC Code of Conduct); or

(h) upon the termination of Membership following disciplinary proceedings against the Member by the Company and or any other professional body.

(2) The Board shall be entitled at its sole discretion at any time to terminate or suspend a Member's Membership for reasons other than those set out at clause 3.4(1).

### **3.5 Register of Members**

The Company shall maintain a register of Members as required by section 24, containing among other things the email address, postal address and contact number of each Member.

### **3.6 Non-transferability of Membership**

Membership shall be Personal to the Member concerned and may not be assigned or transferred to any other Person, company or concern.

### **3.7 Members' right to information**

Other than the rights to access information set out in section 26 of the Act, a Member has no further rights to information pertaining to the Company.

### **3.8 Votes of Members**

- 1) Only Members in Good standing shall have Voting Rights.
- 2) Each Member in Good-standing shall have one vote exercised through a ballot or electronic means and each such vote shall, unless otherwise provided in this Memorandum of Incorporation, be of equal value to the vote of each other Member in Good-standing.
- 3) Directors shall be required to hold Board meetings in relation to the Reserved Matters.
- 4) It is recorded that only General Members shall have a right to vote and participate at the meetings of the Company or a Branch and subject to this Memorandum of Incorporation, shall be entitled to hold any office or position in the Association.

- 5) Certificates of membership may be issued under the authority of the Board in such manner and form as the Board may determine from time to time.

### **3.9 Members' authority to act**

- 1) If the Company has only one Member, the ability of that Member to exercise any or all of the Voting Rights pertaining to the Company on any matter, at any time, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation, subject to that Member being a Member in Good-standing.
- 2) If, at any time, every Member is also a director, the authority of the Members to act on any matter that is required to be referred by the Board to the Members for decision at any time after being referred by the Board, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- 3) A resolution which could be voted on at a Members meeting may instead be adopted by written consent of the Members in Good-standing, given in Person or by electronic communication, provided that:
  - a) the resolution is submitted for consideration to the Members entitled to exercise Voting Rights in relation to the resolution and the resolution is voted on in writing or by electronic communication by such Members within 20 business days after the resolution was submitted to them; and
  - b) the resolution is supported by such Members in Good standing entitled to exercise sufficient Voting Rights at a properly constituted Members meeting.

### **3.10 Annual Membership fees**

- (1) Annual Membership fees shall be levied on all Members and shall be payable by the 31st of January every year to the Company.
- (2) If a Member joins during the Company's financial year, the Member shall only be liable for Membership fees as from the date of joining until the end of that financial year, prorated on a monthly basis. Each year thereafter the Member shall be liable for the full annual Membership fee.
- (3) The amount of the annual Membership fees shall be determined by the Board from time to time.

### **3.11 Proxies and voting under power of attorney**

- (1) A Member may, at any time, appoint any other Member, as a proxy to:
  - (a) participate in, and speak and vote at, a Members meeting on behalf of the Member; or
  - (b) give or withhold written consent on behalf of the Member to a decision by Members acting other than at a meeting.
- (2) The instrument that appoints a proxy must:
  - (a) be in writing, dated and signed by the Member;

(b) be given by the Person appointing such proxy or by their attorney duly authorised in writing or, if the appointor is a corporation, given by a representative so authorised.

(3) The holder of a power of attorney from a Member may, if so authorised by the power of attorney, vote for and represent such Member at any meeting of the Company.

(4) Every instrument of proxy, whether for a specified meeting or otherwise, must comply with section 58 of the Act and subject thereto be in following format, or in such other form as the Board may approve, and the Board may, if they think fit, send out with the notice of any meeting proxy forms for use at the meeting:

"I/We

.....

of

.....

being a Member / Members of the Company appoint

.....of ..... or failing him or her  
.....of ..... or failing him the  
chairman of the Company or failing him or her the chairman of the meeting as my  
/ our proxy to:

[participate in, and speak and vote for me / us at a Members meeting of the  
Company to be held at ..... on .....  
20..... at (time appointed) and at any adjournment thereof.] /

[give or withhold written consent on my / our behalf to the written resolutions to  
which this form of proxy is attached, as contemplated in section 60 of the Act.] /

[participate in, and speak and vote for me / us at any Members meeting held by  
the Company, or give or withhold written consent on my / our behalf in respect of  
any decision contemplated in section 60 of the Act, between the date of this proxy  
instrument and ..... 20.....]\*

Dated this ..... day of ..... 20.....

Name (in full)

Address

.....

signature

\* Delete as applicable

I / We desire to vote as follows:

For

Against

Abstain

Resolution No. 1

Resolution No. 2

(Set out the numbers of the resolutions if more than 1)

Indicate voting preference by placing a mark (either a tick or a cross) in the appropriate block.”

### **3.12 Representation by concurrent proxies**

A Member may not appoint two or more persons concurrently as proxies.

### **3.13 Authority of proxy to delegate**

The authority of a Member's proxy to delegate that proxy's authority to act on behalf of the Member, subject to any restriction set out in the instrument appointing that proxy, is not restricted or varied by this Memorandum of Incorporation.

### **3.14 Requirement to deliver proxy instrument to the Company**

The instrument of proxy or power of attorney appointing a proxy for any particular meeting must be delivered to the Company at its registered address or such other address as is required by the Board from time to time, not less than twenty four hours (or such lesser period as the Directors may determine in relation to any particular meeting) before such meeting is due to take place, or the instrument of proxy or power of attorney shall not be treated as valid.

### **3.15 Deliberative authority of proxy**

The authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising, any Voting Right of the Member, except to the extent that the instrument appointing that proxy provides otherwise, is not restricted or varied by this Memorandum of Incorporation.

### **3.16 Validity of appointment**

- (1) The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or the making of a later inconsistent appointment of another proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company.
- (2) The appointment of a proxy is suspended at any time and to the extent that the Member chooses to act directly and in Person in the exercise of any rights as a Member.

- (3) A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy shall be valid notwithstanding the legal incapacity of the Member or revocation of the instrument or power of attorney unless notice in writing of such legal incapacity or, revocation is received by or on behalf of the Company not less than twenty four hours (or such lesser period as the Board may determine in relation to any particular meeting) before the time appointed for holding the meeting.

### **3.17 Record date for exercise of Member rights**

(1) If, at any time, the Board fails to determine a record date for any action or event, the record date for the relevant matter is:

- (a) in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or
- (b) in any other case, the date of the action or event.

## **4 Members Meetings**

### **4.1 Requirement to hold meetings**

The Company must hold a Members meeting at any time that the Board is required by this Memorandum of Incorporation to refer a matter to the Members for a decision.

### **4.2 Members' right to requisition a meeting**

The right of Members to requisition the Board to call a Members meeting may be exercised if, in aggregate, written and signed demands for a meeting with substantially the same purpose are made by the holders of at least 10% of the Voting Rights entitled to be exercised in relation to the matter to be considered at the meeting, provided that each such demand describes the specific purpose for which the meeting is proposed.

### **4.3 Location of Members meetings**

The authority of the Board to determine the location of any Members meeting and the authority of the Company to hold any such meeting in the Republic or in any foreign country, is not restricted or varied by this Memorandum of Incorporation.

### **4.4 Calling a Members meeting**

(1) If the Company is unable to convene a Member meeting because it has no Directors or because all of its Directors are incapacitated, Members holding at least [25%] of the Company's Voting Rights may convene a meeting.

#### **4.5 Notice of Members meetings**

(1) The minimum number of days for the Company to deliver a notice of a Members meeting to the Members is 10 (ten) business days before the meeting is to begin or 24 (twenty-four) hours if agreed on in writing by Members holding not less than 75% of the Voting Rights exercisable at such meeting.

(2) A notice of a meeting must be in writing and include the information set out in sections 62(3) and 63(3) of the Act.

#### **4.6 Electronic participation in Members meeting**

The authority of the Company to conduct a Members meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, provided that 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, is not restricted or varied by this Memorandum of Incorporation.

#### **4.7 Quorum for Members meetings**

1. Subject to the provisions of clause 4.7(2) to clause 4.7(6) (both inclusive), the quorum for:
  - (a) a Members meeting to begin is sufficient if Members in Good standing are present at the meeting to exercise, in aggregate, at least 25% of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
  - (b) a matter to begin to be considered at the meeting is sufficient if Persons present at the meeting to exercise, in aggregate, at least 25% of all of the Voting Rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- (3) Notwithstanding clause 4.7(1), where the Company has more than two Members, a meeting may not begin, or a matter begin to be considered, unless at least three Members are present at the meeting and the requirements of clause 4.7(1) are satisfied.
- (4) If, within thirty minutes after the appointed time for a meeting to begin, the requirements of clauses 4.7(1), or 4.7(2) if applicable:
  - a. for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for 1 one week; and
  - b. for consideration of a particular matter to begin have not been satisfied:
    - i. if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
    - ii. if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote.
- (5) The Person intended to preside at a meeting, where the quorum requirements in clause 4.7(1), or clause 4.7(2) if applicable, are not satisfied, may extend the 30-minute limit allowed for a reasonable period on the grounds that:

- a. exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of Members to be present at the meeting; or
  - b. one or more delayed Members have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the quorum requirements; or
  - c. any other reason such Person considers appropriate.
- (6) After a quorum has been established for a meeting, or for a particular matter, the meeting may continue, or the matter may be considered, so long as at least 3 Members with Voting Rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.
- (7) If the quorum requirements in clause 4.7(1), or clause 4.7(2), if applicable, have not been satisfied at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, the Members present in Person or by proxy will be deemed to constitute a quorum.

#### **4.8 Adjournment of Members meetings**

- 1) Subject to clauses 4.7, 4.8(2) and 4.8(3), a Members meeting or the consideration of any matter at the meeting, may be adjourned from time to time, on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights held by all of the Persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under consideration, as the case may be.
- 2) An adjournment of a meeting, or the consideration of a matter at the meeting, in terms clause 4.8(1), may be either to a fixed time and place or until further notice, as agreed at the meeting.
- 3) A meeting may not be adjourned beyond the earlier of:
  - a. 120 business days after the record date determined in accordance with clause 3.17; or
  - b. 60 business days after the date on which the adjournment occurred.

#### **4.9 Members resolutions**

- 1) As stipulated in clause 3.8 read with clause 4.1, Members shall be required to hold Branch member meetings in relation to branch matters.
- 2) Member's approval for any resolution pertaining to branch matters must be referred to the Branch meeting.

#### **4.10 Annual General Meeting (AGM)**

- 1) The Company must hold an AGM once in every calendar year, but no more than 15 months after the date of the previous annual general meeting.
- 2) The quorum at the annual general meeting shall be twenty (20) Members in Good-standing and a minimum of a majority of Directors physically present or through other Board approved means.

- 3) If the meeting is inquorate 30 minutes after the appointed time of the meeting, the meeting shall stand adjourned to the same day of the following week in the same place or in the nearest available and suitable venue or, if such day be a public holiday, to the next business day thereafter (subject to the provisions of clauses 4.7.4 being satisfied),
- 4) the Members in Good-standing then personally present at an adjourned annual general meeting shall constitute a quorum and have the full power to transact the business that would have been transacted had the meeting been held on the date for which it was previously called.
- 5) In addition to the requirements of clause 4.1, the notice and agenda calling an AGM must include:
  - a. the financial statements for the immediately preceding financial year to be presented, or a summarised form thereof,
  - b. directions for obtaining a copy of the complete annual financial statements for the preceding financial year,
  - c. the audited financial statements for the immediately preceding financial year and
  - d. the minutes of the prior period's annual general meeting.
- 6) The agenda at an elective AGM shall include but shall not be limited to:
  - a. The presentation of the Directors shortlisted candidates for the board of directors' positions (including but not limited to the roles such as; the President, Vice-President, Secretary General and Treasurer) with each position to be voted and adopted upon by an ordinary resolution (at least [50%]) of the votes of Members in Good-standing present at the AGM;
  - b. Presentation of the Directors' report for the immediately preceding financial year; and
  - c. Any matters raised by Members, with advance notice to the Company.
- 7) The Board will have the sole discretion and the power to choose the venue of the AGM each year.
- 8) The Board of Directors will inform members in good standing of the elective process to be followed during an elective AGM at least one months prior to the date of that elective AGM after approving the process at one of its meetings.

## **5 Directors and officers**

### **5.1 Composition of the Board**

- 1) The Board must comprise not less than 3 (three) Directors (President, Treasurer and Secretary), elected during a duly quorate elective AGM by the general members in good-standing (as determined in clause 4.10.6). At least two members from the previous Board of Directors should remain as Directors as co-opted members.
- 2) Each incorporator of the Company is a first Director and serves until sufficient other Directors to satisfy the minimum requirements of the Act and or this Memorandum of Incorporation have been appointed or elected.
- 3) Subject to clause 5.1.(11), each Director, other than the first Directors and any Directors appointed in this Memorandum of Incorporation, must be elected by the Board to serve for a term of 3 (three) years with a right to be elected for a further term.
- 4) In any election of Directors, the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy.

- 5) Not more than 12 months after the Company date of incorporation a Board of not less than 3 (three) Directors will nominate a Member in Good-Standing to act as president of the Board (President) for a period of [3 (three)] years.
- 6) The nomination of a President will be adopted at a quorate elective AGM by a simple majority of the Members in Good-standing present at the meeting.
- 7) In each vote to fill a vacancy, 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.
- 8) Should there be no Directors, then the President for the time being of the Company or its successor will be entitled to appoint three directors who each satisfies the requirements for election as a Director and has all the powers, functions and duties, and is subject to all the liabilities, of a Director, to fill the vacancies.
- 9) A Director of the Board may be removed and or replaced only if a majority of the voting rights exercised by the Board support such removal and or replacement.
- 10) There are no ex officio Directors.
- 11) The authority of the Board to fill any vacancy on the Board on a temporary basis is not restricted or varied by this Memorandum of Incorporation. A Director appointed on a temporary basis must be a Person who satisfies the requirements for election as a Director and has all the powers, functions and duties, and is subject to all the liabilities, of any other Director.
- 12) To become or to continue to act as a Director or a prescribed officer of the Company, a Person must be a Member in Good-standing and must not be:
  - a. a juristic Person;
  - b. an un-emancipated minor, or a Person under a similar legal disability;
  - c. a Person who has been declared a delinquent or placed under probation by a court in terms of section 162 or section 47 of the Close Corporations Act, 1984, except to the extent permitted by the order of probation;
  - d. an un-rehabilitated insolvent;
  - e. prohibited in terms of any public regulation to be a Director;
  - f. removed from an office of trust, on the grounds of misconduct involving dishonesty;
  - g. a Person who has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
  - h. involving fraud, misrepresentation or dishonesty;
- 13) in connection with the promotion, formation or management of a company;
- 14) in connection with having been appointed or elected as a Director or acting as a Director whilst ineligible or disqualified, or whilst having been placed under probation by a court; or
- 15) under the Act, the Insolvency Act, 1936, the Close Corporations Act, 1984, the Competition Act, 1998, the Financial Intelligence Centre Act, 2001, the Securities Services Act, 2004, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004.
- 16) any member that has been previously been removed from the Company as a result of an internal disciplinary process or through an ordinary board resolution.
- 17) In addition to that, the Board in its sole discretion can request further eligibility requirements or qualifications.

## **5.2 Alternate Directors**

- 1) An alternate Director may be elected or removed by the Board in such an election to act as an alternate Director in a Director's place as the occasion arises and during that Director's absence.
- 2) An alternate Director shall, except as regards the power to appoint an alternate and to receive remuneration, be subject in all respects to the terms and conditions applicable to the Director on whose behalf the alternate acts and each alternate Director shall be entitled:
  - a. to receive notice of all meetings of the Directors or of any committee of the Directors of which the Director on whose behalf the alternate acts is a Member;
  - b. to attend and vote at any such meetings at which the Director on whose behalf the alternate acts is not Personally present;
  - c. to furnish written consent to adopt a decision which could be voted on at a Board meeting;
  - d. to be appointed as an alternate to more than one Director and shall have a vote for each Director for whom such alternate acts, in addition to their own vote as Director, if any; and
  - e. generally, to exercise and discharge all the functions, powers and duties of the Director on whose behalf the alternate acts in such Director's absence as if such alternate were a Director.
- 3) An alternate Director shall also cease to be an alternate Director if the Director on whose behalf the alternate acts ceases for any reason to be a Director, but if any Director retires and is re-elected at the same meeting, any appointment made by such Director shall remain in force as though the Director had not retired.

### **5.3 Authority of the Board**

- 1) The authority of the Board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company is not restricted or varied by this Memorandum of Incorporation.
- 2) If, at any time, the Company has only one Director, the authority of that Director to act without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.

#### **5.4 Directors' meetings**

- 1) The Directors will meet for the dispatch of business not less than 4 (four) times per year.
- 2) A Director authorised by the Board of the Company:
  - a. may call a meeting of the Board at any time; and
  - b. must call such a meeting if required to do so by at least:
- 3) 25% of the Directors, in the case of a Board that has at least 12 (twelve) Directors; or
- 4) 2 (two) Directors, in any other case.
- 5) Notwithstanding clause 5.4(1), any Director may call a meeting of Directors if such Director considers there is good reason to do so.
- 6) The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all Persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.
- 7) The authority of the Board to adopt a decision, that could be voted on at a Board meeting, by way of 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, is not restricted or varied by this Memorandum of Incorporation. Any decision made in the manner contemplated in this clause 5.4(5) has the same effect as if it had been approved by voting at a meeting.
- 8) The Board may determine the form and time for giving notice of its meetings but such a determination must comply with any requirements set out in this Memorandum of Incorporation or the Company's rules, provided that no meeting of the Board shall be convened without notice to all of the Directors subject, however, to the provisions of clause 5.4(7).
- 9) The authority of the Board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the Directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, is not restricted or varied by this Memorandum of Incorporation.
- 10) The quorum requirement for a meeting is a majority of Directors.
- 11) Each Director has one vote on a matter and a majority of votes cast on a resolution is sufficient to approve that resolution other than decisions that require special resolutions or resolutions that need to be taken by the National Council.
- 12) In the case of a tied vote the chair will have a deciding vote and the resolution will pass.

#### **5.5 Directors' power to affect borrowing**

The Board may raise or borrow from time to time for the purposes of the Company, or secure the payment, of such sums as they think fit and may secure the repayment or payment of any such sums by guarantee, bond or mortgage upon all or any of the property or assets of the Company or by the issue of debt instruments or otherwise as they may think fit.

## **5.6 Directors' compensation and financial assistance**

(1) The authority of the Company to pay remuneration to the Directors is restricted or varied by this Memorandum of Incorporation to the extent set out in clause 5.6(2).

(2) The Company shall not, directly or indirectly pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a director, or person appointing a director, of the Company, except –

(a) 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;

(b) as 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;

(c) as 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

(d) in respect of any legal obligation binding on the Company.

## **5.7 Indemnification of Directors**

- 1) For purposes of this clause 5.7, Director includes a former Director, an alternate Director, 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, irrespective of whether or not the Person is also a Member of the Board.
- 2) The authority of the Company to advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company and to directly or indirectly indemnify a Director for such expenses if those proceedings are abandoned or exculpate the Director or arise in respect of any liability for which the Company may indemnify the Director, is not restricted or varied by this Memorandum of Incorporation.
- 3) The authority of the Company to indemnify a Director in respect of any liability for which the Company may indemnify a Director, is not restricted or varied by this Memorandum of Incorporation.
- 4) The authority of the Company to purchase insurance to protect:
  - a. a Director against any liability or expenses for which the Company may indemnify a Director as contemplated in clause 5.7(2) or clause 5.7(3); or
  - b. 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 as contemplated in clause 5.7(2) or any liability for which the Company is permitted to indemnify a Director as contemplated in clause 5.7(3), is not restricted or varied by this Memorandum of Incorporation.

- 5) The Company shall be entitled to claim restitution from a Director or a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this clause 5.7 or the Act.

### **5.8 Committees of the Board**

- 1) The authority of the Board to appoint any number of committees of Directors for managing any of the affairs of the Company and to delegate to any such committee any authority of the Board, is not restricted or varied by this Memorandum of Incorporation.
- 2) Subject to the powers and authorities granted by the Board to any such committee, the authority of:
  - a. the Board to include Persons who are not Directors of the Company, provided that such Persons are not ineligible or disqualified from being a Director as contemplated in [clause 5.1(12)] and the Act and that no such Person shall vote on a matter to be decided by the committee;
  - b. the committee to consult with or receive advice from any other Person; and
  - c. the committee to exercise the full authority of the Board in respect of a matter referred to it, is not restricted or varied by this Memorandum of Incorporation.
- 3) In terms of the above, the Board shall have the authority to appoint a Branch Committee, which shall:
  - a. be vested with the powers and duties of establishing Branches of the Company in the various jurisdictions within and outside of the Republic, as determined by the Board from time to time; and
  - b. be responsible for appointing a Branch Executive Committee for each of the Branches.
- 4) The Branch Executive Committee shall be responsible for running the affairs of the Branch it manages and ensuring that that Branch carries on the Objects of the Company and functions in accordance with the provisions of this Memorandum of Incorporation. The Branch Executive Committee shall be obliged to report all affairs of the Branch it manages to the Board which, in turn, shall report all such affairs to the National Council.

### **5.9 Authentication of documents**

- 1) Any Director or any Person appointed by the Directors for this purpose shall have power to authenticate any resolutions passed by the Directors, and any books, records, accounts and other documents relating to the Company, and to certify copies or extracts from those documents as true copies or extracts and where any books, records, documents or accounts are elsewhere than at the registered office, the local manager or other officer of the Company having the custody of the documents at such other place shall be deemed to be the Person so appointed.
- 2) A document purporting to be a copy of a resolution of the Directors or an extract from the minutes of a meeting of the Directors which is certified in accordance with clause 5.9(1) is prima facie evidence in favour of all Persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors.

## 5.10 National Council

- 1) The temporary structure of the Council may comprise of the following person who is a member in good-standing and fulfils the following functions:
  - a. All representatives from the Board of Directors,
  - b. The Chairpersons of the Branches,
  - c. Two Women of ABASA representatives
  - d. Three members of the Past Presidents Council,
  - e. Two Student Chapter Representatives, (to be approved and determined by the Board of Directors)
  - f. Representatives from relevant professional accounting professional bodies such as (to be approved and determined by the Board of Directors):
    - i. South African Institute of Chartered Accountants (SAICA),
    - ii. South African Institute of Professional Accountants (SAIPA),
    - iii. Association of Certified Chartered Accountants (ACCA),
    - iv. Chartered Institute of Management Accountants (CIMA) and
    - v. South African Institute of Business Accountants (SAIBA)
- 2) The Council shall not interfere with the activities of the Board, unless the Board fails to comply with its mandate in terms of the Memorandum of Incorporation in which case the matter must be brought to the attention of the Members by the Council at a General Meeting.
- 3) The Council shall:
  - a. serve as a consultative forum and shall consider and advise the Board on matters relating to the strategy of the Board and the Profession;
  - b. temporarily assume the powers and functions of the Board if most of the Board Members resign or are removed and are not replaced in accordance with the provisions of the Memorandum of Incorporation until such time as a new Board can be appointed.

## 6 Reserved Matters

Notwithstanding anything to the contrary of this Memorandum of Incorporation, none of the Directors, officers or employees of the Company shall have the authority to commit or bind the Company to any of the following resolutions or transactions, nor will the Members or their nominees take any steps of any nature to approve, authorise or permit the Company to become bound or committed to any such resolution or transaction, unless such resolution or transaction is approved in advance in writing in the form of a special resolution by the Board:

- (a) any variation, amendment or alteration to this Memorandum of Incorporation;
- (b) a change in the accounting reference period or accounting policies;
- (c) the acquisition or disposal by the Company of a subsidiary;
- (d) the acquisition or establishment of subsidiaries;

- (e) any alteration in the remuneration of any of the Directors; only if Directors receive remuneration;
- (f) the disposal of the whole or a substantial part of the Company's assets;
- (g) the giving of guarantees or making of loans other than in the ordinary course of business;
- (h) the change of the name of the Company or its registered office;
- (i) the entry into any joint venture, partnership or similar arrangement;
- (j) the institution or defence of legal proceedings of any nature or the settlement of any claim in excess of R1,000,000 otherwise than in the ordinary course of the business of the Company;
- (k) the incurrance of any foreign exchange exposure otherwise than in the ordinary course of the Business;
- (l) the sale, assignment, lease, transfer or other disposition of any intangible assets including goodwill, logos, names, trademarks, copyright, patents or licences otherwise than in the ordinary course of business;
- (m) the passing of a resolution that the Company be wound up, deregistered, placed into liquidation or judicial management or placed into business rescue;
- (n) the liquidation of the Company, or the placing of the Company into business rescue or under judicial management (in any case, whether provisional or final), or a compromise between the Company and its creditors generally;
- (o) the furnishing of any encumbrances over any asset or of any guarantees, suretyships, undertakings, indemnities and other forms of intercession, for the obligations of third parties, not provided for in the budget or in the ordinary course of business; and
- (p) the making of any early repayment of the whole or part of any indebtedness.

## **7 General Provisions**

### **7.1 Accounts**

- 1) The Board must keep accurate and complete accounting records required or prescribed by the Act.
- 2) The accounting records must be kept at the registered office of the Company or (subject to the provisions of section 25 of the Act) at such other location within the Republic as the Board think fit, and shall at all times be accessible and open to inspection by the Board.
- 3) The financial year of the Company is 31 March.

### **7.2 Conversion of the Company to a profit company, disposal of assets, mergers and amalgamations**

- 1) The Company may not amalgamate or merge with, or convert to, a profit company, or dispose of 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.
- 2) Any proposal to dispose of all or the greater part of the Company's assets or undertaking or to amalgamate or merge with another non-profit company must be submitted to the Board for special resolution approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Act, respectively.
- 3) Sections 115 and 116 of the Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause 7.2(2) above.

### **7.3 Donations to the Company**

- 1) The Directors shall, in respect of every donation received, give the donor a receipt and furnish the following particulars:
  - a. the reference number of the Company issued by the Commissioner for the South African Revenue Service for the purposes of s18A of the Income Tax Act;
  - b. the date of receipt of the donation;
  - c. the name of the Company, together with an address to which enquires may be directed;
  - d. the name and address of the donor;
  - e. the amount or nature of the donation; and
  - f. a certificate to the effect that the receipt is issued for purposes of s18A of the Income Tax Act and that the donation has been or will be used exclusively for the Company that fall within the ambit of Part II of the Income Tax Act.
- 2) The Directors shall not accept any donations to the Company unless they are irrevocable and subject to the terms and conditions of this Memorandum of Incorporation.

#### **7.4 Winding-up**

- 1) Upon the winding-up or dissolution of the Company, no past or present 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) The entire net value of the Company must 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 which have similar objects to the Company's Objects.
- 3) The Company's Objects may be determined in terms of the Company's Memorandum of Incorporation or by its Directors immediately before the time of its dissolution; or by the court, if the Memorandum of Incorporation or Directors fail to make such a determination.

This Memorandum of Incorporation was adopted by the incorporators of the Company as evidenced by the following signatures of each of them, or on their behalf.

Name of incorporator

Identity or registration number of incorporator

Signature

Date