

THE FIDUCIARY INSTITUTE OF SOUTH AFRICA

CONSTITUTION

1. Name

The name of the Institute shall be the “Fiduciary Institute of South Africa”, and the official abbreviation of the name shall be “FISA”.

2. Definitions

In this Constitution:

- 2.1. “Annual General Meeting” means a meeting convened in accordance with the provisions of paragraph 17 below;
- 2.2. “Chairman” means the Chairman of the Institute and shall include the person who holds the office of the Chairman from time to time by whatever title he may be known;
- 2.3. “Chief Executive Officer” means the Chief Executive Officer of the Institute, if appointed, and shall include any person who occupies such position from time to time, by whatever title he may be known. The Chief Executive Officer shall be an employee of the Institute and the terms and conditions of his employment shall be negotiated by the responsible committee created in accordance with the provisions of the Constitution. A temporary or acting Chief Executive Officer may be appointed from time to time in appropriate circumstances and may or may not be an employee of the Institute, provided that such appointment shall be communicated by the Council to all members in writing disclosing full reasons for the failure to appoint a full time employee;

- 2.4. "Co-opted Councillor" means a person co-opted in accordance with the provisions of paragraph 8 below;
- 2.5. "Council" means the Council of the Institute and includes, mutatis mutandis, the Executive Committee of the Institute under its previous Constitution, and vice versa;
- 2.6. "Councillor" means a member elected in accordance with the provisions of paragraph 15 below;
- 2.7. "Constituency" mean all the members resident in a Region or forming part of an interest group, as the case may be;
- 2.8. "Day" means a calendar day and includes Saturday, Sunday and Public Holidays;
- 2.9. "Extra-ordinary General Meeting" means a meeting convened in accordance with the provisions of paragraph 18 below;
- 2.10. "Institute" means the Fiduciary Institute of South Africa;
- 2.11. "Interest Group" means an interest group identified and recognised as such by the Council from time to time;
- 2.12. "Meeting," means, in accordance with paragraphs 17 and 18, the presence of members at the time and place, specified in accordance with the provisions of paragraphs 17 and 18 and the subsections, including a meeting during which member participation is facilitated by electronic or other telecommunication means. In all other circumstances a "meeting" shall be any form of gathering recognised by the Council, or provided for in the Regulations;
- 2.13. "Member" means a person who has satisfied the requirements for membership in accordance with the relevant Regulations and who has

been admitted to membership of the Institute, and "Member in good standing" means any such member who, at the time in question, is still in compliance with all such requirements;

- 2.14. "Nationally Elected Councillor" means a person nominated and elected in accordance with the provisions of paragraph 15;
- 2.15. "Proxy" means an instrument appointing a member to exercise a vote. It shall be in writing under the hand of the appointer and no person shall be appointed a proxy who is not a member of the Institute and qualified to vote. Such instrument of proxy shall be available only for the meeting named therein or for any adjournment of such meeting. The instrument appointing a proxy shall be handed to or forwarded so as to be received by the Chief Executive Officer, or in his absence, the Chairman, or be deposited at the head office of the Institute not less than forty-eight (48) hours before the time of holding the meeting or adjourned meeting, as the case may be, at which the person named in such instrument proposes to vote;
- 2.16. "Region" means a region as determined by the Council from time to time, more fully defined in the relevant Regulations;
- 2.17. "Regulation" means a prescription contained in any Regulations of the Institute made, or amended and in force in accordance with the provisions of paragraph 9;
- 2.18. "Republic" means the Republic of South Africa;
- 2.19. "Resolution" means a decision agreed to at a meeting and recorded pursuant to paragraphs 13, 17 and 18;
- 2.20. "Vice-Chairman" means the Vice-Chairman of the Institute and shall include the person who holds the office of Vice-Chairman from time to time, by whatever title he may be known;

- 2.21. "Year" means a calendar year commencing on 1 January;
- 2.22. Unless inconsistent with the context, words and expressions in the masculine gender include other genders and words signifying the singular number include the plural and vice versa.

3. Legal Persona and Non-Profit Motive

- 3.1. The Institute is a body corporate *universitas* with perpetual succession, capable of suing and being sued in its own name and performing such acts as are necessary for or incidental to the achievements of its objects and the exercise of its powers or the performance of its functions and duties under this Constitution or under any statute of the Republic.
- 3.2. The Institute shall promote the interests of its members by means other than the carrying on of any trading or other profit-making activities (save for any activities related to the promotion or execution of the objectives of the Institute), or the participation in any business, profession or occupation carried on by any of its members, or the provision to any of its members of financial assistance or of any premises or continuous services or facilities required by its members for the purpose of carrying on any business, profession or occupation.

4. Indemnities

- 4.1 Every member of the Council or of any committee appointed by it and every office-bearer or employee of the Institute shall be indemnified by the Institute against claims made against him and any losses and expenses incurred by him in or about the execution of his duties, except claims, losses or expenses arising from his own fraud, wilful default, or gross negligence.

- 4.2 No member of the Institute shall have any claim against the Institute, or against a member of the Council or of any committee appointed by it, or against any officer or employee of the Institute, in respect of anything done bona fide by it or them or any of them in the execution of their duties.

5. Limitations of Liability

- 5.1. A member of the Institute shall not have any liability for any commitments undertaken by the Institute.
- 5.2. The liability of a member is limited to the payment to the Institute of any outstanding fees, subscriptions and contributions and settlement of any other debts to the Institute that he may have incurred.

6. Membership and Designations

- 6.1. Only a member is entitled to use any of the designations reserved for members of the Institute in accordance with the Regulations.
- 6.2. Nothing in this Constitution or in the Regulations shall be construed as conferring upon anyone else any rights to use any of the designations reserved for members of the Institute.

7. Objectives

The objectives of the Institute are:

- 7.1. To promote the fiduciary profession;
- 7.2. To promote the interests of clients of fiduciary professionals through the setting and enforcement of professional standards of conduct for fiduciary professionals;

- 7.3. To provide a framework within which members can achieve the qualifications and competence to practise as fiduciary professionals;
- 7.4. To ensure that members maintain the highest professional and ethical standards in the pursuance of their profession;
- 7.5. To promote the interests of members in fulfilling their professional aspirations.

8. The Council

- 8.1 The affairs of the Institute shall be managed by a Council consisting of not more than twelve (12) persons who are resident in South Africa and who shall be referred to as Councillors, of whom:
 - 8.1.1 Three (3), known as Nationally Elected Councillors, shall be nationally elected by all members in a direct ballot in which each member may vote once and which may be conducted by way of a postal or electronic ballot. In case of the latter, the electronic system used shall be capable of recording sufficient information to enable effective scrutiny in case of a dispute over votes;
 - 8.1.2 Five (5) shall become councillors *ex officio* by virtue of their election as Chairman of a Regional Committee by the members in that Region in accordance with the Regulations for Regional Committees and shall be known as Regional Councillors;
 - 8.1.3 Three (3) may be co-opted in accordance with the provisions of paragraph 8.2 below;
 - 8.1.4 One (1) shall be the Chief Executive Officer, if appointed.

8.2 The Chairman shall have the right at any time to co-opt a maximum of three (3) additional persons to the Council as Co-opted Councillors whenever the Chairman deems such additional appointments necessary.

8.2.1 Any such co-option shall be subject to the approval by a majority of the Council as constituted prior to any co-options.

8.2.2 A Co-opted Councillor may be, but need not be, a member of the Institute.

8.2.3 A Co-opted Councillor shall not retire in accordance with paragraph 15, but shall hold office until the next Annual General Meeting and thereafter shall be eligible to be co-opted again.

9. Powers of the Council

9.1 In managing the affairs of the Institute, the Council shall be entitled to exercise all the powers of the Institute except such powers as are expressly reserved by the provisions of this Constitution to the members of the Institute in general meeting.

9.2 Without in any way limiting the scope of its powers as generally described in paragraph 9.1 above, and in addition to powers given to it elsewhere in this Constitution or the Regulations, the Council shall have power in the name of and on behalf of the Institute:

9.2.1 To receive and accept donations, grants and other moneys;

9.2.2 To purchase or otherwise acquire, take on lease or hire, exchange, improve, sell, mortgage, pledge, let, dispose of or otherwise deal in property of any description whatsoever;

9.2.3 To raise or borrow or secure any sum of money or to secure the performance of any obligation in such manner and upon such

terms and conditions as it deems fit and, in particular, by the execution of mortgage or notarial bonds or the issue of debenture or debenture stock charged upon all or any of the property of the Institute;

- 9.2.4 To invest the funds of the Institute or any portion thereof in such securities and in such manner as the Council may from time to time determine and to vary or transpose such investments at its discretion;
- 9.2.5 To open and operate banking accounts, and investment accounts with registered banking and other financial institutions;
- 9.2.6 To apply and use the funds and income of the Institute to promote the objectives of the Institute;
- 9.2.7 To levy fees or subscriptions on its members;
- 9.2.8 To prescribe disciplinary measures and penalties, including the levying of a fine, against members found guilty of a breach of the Institute's Constitution and Regulations, including any Code of Conduct and/or Ethics and/or Professional Responsibility as may be in use from time to time;
- 9.2.9 To institute and defend legal proceedings;
- 9.2.10 To appoint and remove any person as an officer or employee of the Institute and to determine his designation, duties, salary and other terms of employment;
- 9.2.11 To enter into contracts and to authorise the settling of the terms of and the signature of any contract or any other document;

9.2.12 To interpret any clause of the Constitution or Regulations if any dispute arises as to its meaning, such interpretations being binding on the fellows and members of the Institute if accepted by not less than two thirds of the members of the Council;

9.2.13 To make and amend Regulations by general resolution;

9.2.13.1 The Council, in amending and making new Regulations, may cover any matter that it considers necessary or expedient to prescribe for the better execution of this Constitution and the furtherance of the objectives of the Institute;

9.2.13.2 The Regulations shall become binding when notice of these Regulations has been given to members;

9.2.13.3 The said notice shall be deemed to have been received by members within 7 days after having been published, dispatched or transmitted to members;

9.2.13.4 The election of a medium of notification remains within the sole discretion of the Council;

9.2.14 Generally to do whatever the Council deems necessary to enable it to carry out the objectives of the Institute and to exercise the powers and to perform the functions and discharge the duties given to or imposed upon it in accordance with this Constitution.

10. Election of Chairman and Vice-Chairman

10.1. The Council as constituted in accordance with the provisions of paragraphs 8, 15 and 17, shall meet directly after the annual general meeting held in accordance with paragraph 17, to elect from amongst its number, a Chairman and a Vice-Chairman to hold office until the election of their successors.

- 10.2. In electing the Chairman and Vice-Chairman the Council shall consider the following:
- 10.2.1. The length of service on Council of candidates for the relevant position;
 - 10.2.2. Any specialised knowledge, skills and experience of the candidates;
 - 10.2.3. The general understanding of, position and standing in, the fiduciary industry of the candidates.
- 10.3. The person elected as Chairman or Vice-Chairman shall serve an initial term of two (2) years, where after the incumbent may stand for election for a further term of one (1) year.
- 10.4. No person shall hold office as Chairman or Vice-Chairman for more than three (3) consecutive years.
- 10.5. The Chairman's term of office shall expire upon the induction of the incoming Chairman at the first meeting of the new Council following an annual general meeting convened in accordance with the provisions of paragraph 17 below.
- 10.6. In the event of any Councillor not being present for the election of the Chairman or Vice-Chairman, such Councillor shall be entitled to furnish a proxy prescribed in accordance with the provisions of paragraph 2.15 above to another Councillor to vote on his behalf.
- 10.7. Any vacancy in any of the offices of Chairman or Vice-Chairman as a result of death, resignation or an inability to perform the duties and responsibilities of the office, before the term of office has expired, shall be filled by the Nationally Elected and Regional Councillors from amongst its ranks and in accordance with the above provisions, at a

meeting of Council provided for in accordance with the provisions of paragraph 13 below. Such appointment shall hold good until the expiration of the term in which the vacancy has occurred, but no such appointment shall disqualify the appointee from election to the same office for the next succeeding year.

11. Committees appointed by Council

The Council shall have the power to appoint:

- 11.1. a Disciplinary Committee;
- 11.2. a Finance and Administration Committee;
- 11.3. an Audit Committee;
- 11.4. a Membership Committee; and
- 11.5. a Professional Standards Committee;

Which shall have the powers to carry out the duties and exercise the functions granted to those committees under the Regulations.

12. Other Committees

The Council may appoint other committees, each under the chairmanship of a sitting Councillor, to assist it in the performance of its functions and duties and may appoint such of its members and such persons who are not members of the Council or the Institute as it may deem fit, to be members of any such committee.

13. Council Meetings

- 13.1 The Council may meet, adjourn and otherwise regulate its meetings as it shall deem fit, provided that it shall meet at least three (3) times each year.
- 13.2 Any meeting of the Council may be held without the Councillors being present in the same physical location, provided that all Councillors can take part fully in the proceedings by way of an electronic or other audio or audio-visual link.
- 13.3 No meeting shall be held or be able to take any binding decisions in the absence of a quorum, consisting of at least fifty percent plus one of the combined number of elected and co-opted councillors in office at the time.
- 13.4 Any meeting of the Council shall be convened at any reasonable time and at any convenient place upon request of the Chairman or of any two (2) Councillors.
- 13.5 Resolutions proposed at any meeting of the Council shall be decided by a majority of the votes recorded. In cases of an equal number of votes for and against a motion or proposed resolution, the chairman of the meeting shall have a deciding vote.
- 13.6 The Chairman, or failing him, the Vice-Chairman, shall preside at all meetings of the Council, but if at any such meeting the Chairman or the Vice-Chairman is not present, without prior notification, within five (5) minutes after the time appointed for the meeting or if they refuse to preside, the remaining Councillors shall appoint one of their number to act as chairman of the meeting.

14. Council Vacancies

- 14.1. In the event of a vacancy occurring on the Council as a result of death, resignation or other cause, the Council shall nominate a member of the Institute, as the case may be, subject to provisions contained in paragraphs 8 and 15, to serve as a Councillor in place of the Councillor whose seat has become vacant.
- 14.2. A person who has been nominated as a Councillor in accordance with paragraph 14.1 shall hold office until the next annual general meeting.

15. Election of Councillors

- 15.1 One (1) Nationally Elected Councillor shall retire at every annual general meeting of the Institute. Such Councillor shall be determined by agreement or by drawing of lots amongst those nationally elected Councillors who have been the longest in office, or partly by both methods, until the first term of three years under this Constitution (as amended from time to time) has come to an end after which the Councillor who has reached the end of his three year term shall retire.
- 15.2 Every retiring Nationally Elected Councillor shall be eligible for re-election and shall, unless he has indicated to the Chief Executive Officer in writing his desire not to offer himself for re-election, be deemed to be nominated for re-election.
- 15.3 A member of the Institute, not being a retiring Nationally Elected Councillor, shall not be eligible for election as Councillor unless a nomination form, approved by the Chairman from time to time, is lodged with the Chief Executive Officer or Secretariat at a date to be set by him, but which shall not be later than forty two (42) days before the date of the annual general meeting. Such nomination form shall be signed by two (2) members of the Institute in good standing and by the member proposed for election, thereby signifying his consent to the

nomination. The Chief Executive Officer shall examine each nomination in order to ensure that it is valid.

- 15.4 If the valid nominations are not more in number than the vacancies that exist, the person(s) thus nominated shall, as from the end of the annual general meeting following the nomination process envisaged in paragraph 15.3, be duly elected Councillors.
- 15.5 In the event of the valid nominations exceeding the number of vacancies in any one year the Chief Executive Officer shall distribute, not later than thirty (30) days before the annual general meeting, suitable ballot papers to all eligible members which ballot papers shall be completed, signed and returned to the Chief Executive Officer by the said members before or on the date set by him and which date has been communicated to members. This date shall not be later than fourteen (14) days prior to the holding of such annual general meeting.
- 15.6 Two (2) scrutineers shall be appointed by the Chairman, or failing him, the Vice-Chairman, to count the votes and to declare the result of the ballot and their declaration, which shall be announced by the Chairman at the annual general meeting, or failing him the Vice-Chairman, shall be final and conclusive.
- 15.7 All members of the Institute in good standing, including Councillors, shall be eligible to vote.
- 15.8 In the event of a tie to fill the last vacancy, the Council in meeting shall decide who shall be elected, by the toss of a coin, which outcome shall be final and binding.
- 15.9 The election of Regional Chairmen who shall become Councillors ex officio in accordance with the provisions of paragraph 8.1.2 shall be conducted in accordance with the provisions of the Regulations for

Regional Committees, provided that for the first election after this Constitution has taken effect:

15.9.1 The Chief Executive Officer and the Chairman of the Institute, acting together, shall draw lots to determine in which two (2) Regions the first term of office of the Regional Committee shall be only one (1) year, where after the term of office of those two (2) Regional Committees shall revert to two (2) years;

15.9.2 The remaining three Regional Committees shall serve a two (2) year term from the outset, to create two groups of Regions with elections for Regional Committees in alternate years.

16. Termination of Office of Councillors

The office of Councillor shall be vacated:

- 16.1. If the Councillor ceases to be a member of the Institute; or
- 16.2. If the Councillor resigns in writing; or
- 16.3. If the Councillor absents himself from two (2) consecutive meetings of the Council without an acceptable apology. His apology, if any, can be decided to be unacceptable by a majority of 75% of Councillors present at the meeting in question; or
- 16.4. If the Councillor is declared insolvent and/or his estate is sequestrated; or
- 16.5. If the Councillor becomes of unsound mind and two medical practitioners, regarded by a majority of the other Councillors as sufficiently qualified, attest to this fact in accordance with the provisions of the relevant mental health legislation in force in the Republic at the time; or

- 16.6. If the Councillor is convicted by a court of criminal justice in the Republic or elsewhere of any criminal offence of which dishonesty is an element, or which is listed in the First Schedule to the Criminal Procedure Act, 51 of 1977 as amended, and, in case of the latter, he is sentenced to imprisonment without the option of a fine for an offence of which dishonesty is not an element; or
- 16.7. If the Councillor's actions are, in the opinion of two thirds of all Councillors in office at the time, detrimental to the interests of the Institute; or
- 16.8. If a General Meeting of Members of the Institute convened in accordance with the provisions of paragraph 17 or 18 below so resolves.

17. Annual General Meeting of Members

- 17.1. An Annual General Meeting of the Institute shall be held once in every calendar year at a date between 1 February and 30 June, at such time and place as may be determined by the Council, for the purpose of:
- 17.1.1. Receiving, considering and approving the accounts for the past year and the report of the Institute's auditors; and
 - 17.1.2. Receiving, considering and approving the annual report of the Council on the business of the Institute; and
 - 17.1.3. Confirming the appointment of the auditors; and
 - 17.1.4. Declaring the result of the election of Councillors held in accordance with the provisions of paragraphs 8 and 15 and the Regulations for Regional Committees; and

17.1.5. To consider any other matter of which notice was given to the Chief Executive Officer in accordance with the provisions of paragraph 17.2 below.

17.2. The Chief Executive Officer shall notify all members officially of the Annual General Meeting not less than twenty one (21) days before the meeting. The notice of the Annual General Meeting shall include:

17.2.1. The date, time and place of the meeting; and

17.2.2. All matters of which notice was given to the Chief Executive Officer not later than the date specified by him for the submission of the said notice and which date had been communicated to members, provided that such date shall not be later than thirty (30) days before the date of the meeting.

17.3. No other business may be transacted at the annual general meeting.

18. Extra-ordinary General Meetings of Members

18.1. All other meetings of members of the Institute called for the purpose of conducting the affairs of the Institute shall be called *Extra-Ordinary General Meetings*.

18.2. The Council may call an extra-ordinary general meeting at any time by giving not less than twenty-one (21) days' notice and shall upon a request signed by at least twenty-five (25) members, within twenty-one (21) days of the receipt of the request, call an extra-ordinary general meeting to be held not later than three (3) months from the date of the request for such meeting.

18.3. The notice of such meeting shall specify:

18.3.1. The date, time and place of the meeting;

- 18.3.2. An agenda consisting of all business to be conducted at the meeting, including any documentation to be approved by the meeting or supporting or expanding on any proposed decision to be taken by the meeting.
- 18.4. The non-receipt of said notice by any member shall not invalidate the proceedings of any general meeting.
- 18.5. No business not listed in the agenda distributed with the notice of such meeting shall be discussed at the meeting.
- 18.6. The Chairman, by virtue of his office, or, in his absence, the Vice-Chairman, shall take the chair, or in their absence, or if none of them is willing to preside, a Councillor shall be chosen to take the chair. If at any meeting no person entitled to take the chair shall be present within ten (10) minutes after the time appointed for holding such meeting, or if all such persons present decline to take the chair, then the members present shall choose one of their number to chair the meeting.

19. Quorum at Meetings of Members

- 19.1. Ten (10) members present in person and entitled to vote shall be a quorum for either the Annual General Meeting or an Extra-Ordinary General Meeting.
- 19.2. Only members in good standing shall be entitled to vote.
- 19.3. If, at any annual or extra-ordinary general meeting, a quorum of members is not present within half an hour of the time appointed for the holding of the meeting, the meeting, if convened upon the request of members, shall be dissolved. In any other case it shall stand adjourned to the same day and hour in the following week, but if such date is a public holiday or a non-business day, then to the next

succeeding business day and to the same place, or if such place not be available, to such other place as the chairman of the meeting may appoint, and at such adjourned meeting the members present shall form a quorum.

19.4. Subject to the provisions contained in paragraph 21, ten (10) members present personally and entitled to vote at any Annual or Extra-Ordinary General Meeting, may demand, subject to the provisions of paragraph 17.2, that any question before the meeting be decided by poll, which poll may be taken in such manner as the chairman may direct.

19.5. Every member who is present at any Annual General Meeting or Extra-Ordinary General Meeting in person shall, on a show of hands, have one vote only, but upon a poll such member shall have in addition one (1) vote for every member represented by him in proxy. On a poll taken at any such meeting, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

20. Arbitration

20.1. Any dispute arising from the interpretation of this constitution or from any action by the Executive Committee or the members in general meeting, either between the Executive Committee and members in general meeting or between the Institute and any member or members which dispute cannot be resolved by members in general meeting, shall be referred for arbitration by a single arbitrator whose decision shall be binding on the parties to the dispute, and who shall be:

20.1.1. A senior advocate (SC) who is a member of the Bar at any division of the High Court of South Africa; or

- 20.1.2. An attorney who is a member of a Law Society in the Republic of South Africa and who has been in practice as such for at least ten years at the time.
- 20.2. The arbitrator referred to in clause 20.1 shall be appointed by the parties to the dispute, by mutual agreement. Failing such agreement the arbitrator shall be appointed by requesting the chairman of the Johannesburg Bar Council to nominate a person in the case of sub-clause 20.1.1, or the chairman of the Association of Law Societies of South Africa in the case of sub-clause 20.1.2, which nomination shall be binding on the parties.

21. Amending the Constitution

- 21.1. Only the members of the Institute at an Annual General Meeting or an Extra-Ordinary General Meeting may amend this Constitution.
- 21.2. Subject to the provisions of paragraph 19.1, five per cent (5%) of the total number of members who are present in person or by proxy shall constitute a quorum for amendment of this Constitution.
- 21.3. Paragraphs 7, 8 and 21 of this Constitution may only be amended by a seventy five percent (75%) majority of members present in person or by proxy at an annual general meeting or an extra-ordinary general meeting.
- 21.4. Only members in good standing shall be entitled to vote.

22. Amalgamation

- 22.1. With the approval of not less than seventy five percent (75%) of members who are present in person or by proxy at an Annual or Extra-Ordinary General Meeting duly convened and constituted, the Institute may amalgamate or incorporate or join with other bodies in the Republic of South Africa or elsewhere in Southern Africa, provided these other bodies

have objectives similar to those of the Institute and are exempt from liability to pay income tax.

22.2. For the purpose of an amalgamation as envisaged in paragraph 22.1, the Institute may take over and assume the assets and liabilities of the aforesaid bodies including books, records, documents and coats of arms or may make over part or all of the assets and liabilities of the Institute.

23. Winding Up

23.1. The Institute may be wound by a resolution of not less than seventy five percent (75%) of the members who are present in person or by proxy at an Extra-Ordinary General Meeting duly convened and constituted.

23.2. Members shall not have any claim in respect of any surplus there may be on winding up of the Institute, which surplus shall be distributed to any institution with similar objectives or, if no such institution is in existence, to any other professional body which, in the discretion of the Council in office at the time, has objectives closest to those of the Institute.

ADOPTED BY THE MEMBERS IN GENERAL MEETING AND CERTIFIED AS SUCH BY THE CHAIRMAN AND VICE-CHAIRMAN ON THIS _____ DAY OF _____ 20__.

Chairman

Vice-Chairman