

**THE FIDUCIARY INSTITUTE OF SOUTH AFRICA**

**CONSTITUTION**

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# THE FIDUCIARY INSTITUTE OF SOUTH AFRICA

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## **CONSTITUTION**

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**1. Name:**

The name of the Institute shall be The Fiduciary Institute of South Africa (hereinafter referred to as "the Institute").

**2. Definitions:**

"member" shall include full, associate and honorary associate members of the Institute who is paid up unless otherwise stated.

**3. Corporate status:**

The Institute shall be a body corporate and accordingly:-

- 3.1 the Institute shall have a perpetual succession and shall continue as an entity notwithstanding changes of membership within the Institute;
- 3.2 the Institute shall hold and own its property and assets for its own account and distinct and apart from the members of the Institute;
- 3.3 the Institute shall be liable for its own debts and obligations and the liability of any member of the Institute for the said debts and obligations shall be limited specifically to the amount equivalent to the unpaid fees and subscriptions due by such member in terms hereof;
- 3.4 the Institute shall not carry on any business that has for its object the acquisition of gain by the Institute or by the individual members thereof;
- 3.5 the Institute shall institute, conduct or defend all legal or other proceedings by or against the Institute in its own name.

#### **4. Objects:**

The objects for which the Institute is established are:-

- 4.1 to promote and protect the interest of members and their clients in the provision of comprehensive fiduciary activities which includes estate administration, trust administration, financial planning and asset management services;
- 4.2 to provide a forum for members to review and promote matters of common interest;
- 4.3 to provide an influential lobby for the benefit of members;
- 4.4 to undertake research into areas where combined technical resources and experience are needed;
- 4.5 to develop a strong public image for the fiduciary services industry in South Africa;
- 4.6 to provide a point of reference for the registration and discipline of members and to foster and maintain good relations between members, the regulators and clients of members..

#### **5. Powers:**

The Institute shall have all the powers of a natural person of full legal capacity dealing with his own affairs, and in particular the Institute may:-

- 5.1 receive contributions, subscriptions or donations to further the objects of the Institute;
- 5.2 deal with the assets of the Institute in order to promote the objects of the Institute. To that end the Institute may enter into any contract or perform any act, which may be necessary or expedient.

#### **6. Non - Profit:**

- 6.1 The income and assets of the Institute shall be applied solely towards the promotion of the objects of the Institute as set forth in this Constitution and no portion shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to members of the Institute, provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officer or servant of the Institute or to any member thereof in return for any

services rendered to the Institute.

## **7. Membership:**

### **7.1 Full membership:**

Full membership may be granted to an applicant who has attained such qualification and level of skill and experience in fiduciary matters as may be determined by the Executive Committee from time to time.

### **7.2 Associate Membership:**

Associate membership may be granted to an applicant who has attained such qualification and level of skill and experience in fiduciary matters as may be determined by the Executive Committee from time to time.

### **7.3 Honorary Associate Membership:**

Honorary associate membership may be granted to any person at the discretion of the full members in recognition for services rendered in promoting the objects of the Institute.

### **7.4 General:**

7.4.1 Notwithstanding the provisions of clauses 7.1 to 7.3 above the Institute shall retain the right to grant membership in any of the above categories on more general or limited grounds than those specified.

7.4.2 Any applicant for membership shall furnish the Institute with:

7.4.2.1 proof of his/her qualifications and period of fiduciary experience.

7.4.2.2 a signed Code of Conduct.

7.4.2.3 payment of the required entrance fee.

7.4.2.4 such other relevant information as may reasonably be required by the Executive Committee.

7.4.3 Applications for full membership and associate members shall be posted to the Institute's website for a period of one calendar month to enable such applications to be considered by the existing full members of the Institute. If an existing full member disapproves of any application so posted, he/she shall immediately furnish the Secretary with full reasons why such

application should be declined.

7.4.4 Any application for membership so cautioned by an existing full member shall be considered and either accepted or rejected by the Executive Committee of the Institute.

7.4.5 The Institute shall have full and unrestricted power to defer any consideration of any application for membership on such conditions and for such period as the Institute in its absolute discretion deems necessary and to refuse any application without assigning any reasons.

7.4.6 On an application for membership being accepted as aforesaid, the Secretary of the Institute shall issue to the applicant a certificate in writing of such acceptance in such form as may be prescribed by the Executive Committee. This certificate remains the property of the Institute and must be returned to the Institute should the Executive Committee call for it.

## **8. Information to be furnished:**

Every member of the Institute shall immediately notify the Institute of:-

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8.1 any change in his/her registered address or electronic mail address.

8.2 any change in his/her qualifications

8.3 if so required, furnish the Institute with a full response to any complaint or query received from any source against such member lodged with the Institute.

## **9. Entrance Fees:**

9.1 The entrance fee payable by each member shall be a sum determined from time to time by the Executive Committee and approved by the members at a properly constituted meeting of the Association.

## **10. Annual Subscriptions:**

10.1 The annual subscription payable by each member shall be a sum determined from time to time by the Executive Committee and

approved by the members at a properly constituted meeting of the Institute.

- 10.2 The annual subscription shall become due and payable in advance in January of each year. Any member admitted to membership after the 1st of July in any year shall be liable for one half of the annual amount of the subscription due for the year in which membership commenced.
- 10.3 Notwithstanding the provisions of clause 10.1, the Executive Committee may institute additional special levies on members for specific purposes. Such special levies shall be deemed to be part of the annual subscription for purposes of interpreting any provision of this constitution, subject thereto that the Executive Committee shall:
  - 10.3.1 Clearly identify the specific purpose for the special levy and prepare an appropriate financial budget with regard to the funds so to be raised; and
  - 10.3.2 Propose an equitable formula for contribution by all members; and
  - 10.3.3 Request all full members by notice to confirm that they accept the levy so imposed, and obtain the support of at least 60% (sixty per cent) of all full members.

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## **11. Cessation of membership:**

11.1 The Institute shall have the power and authority to terminate the membership of a member by a majority resolution passed at a properly constituted meeting of the Executive Committee of the Institute upon any of the following grounds:-

11.1.1 notice of resignation in writing received from such member;

11.1.2 non payment of annual subscription by a member, if such member's annual subscription is in arrears for three months after due date, provided that such member shall nevertheless be liable to pay the amount of such subscription and/or such other sums as may be due to the Institute;

11.1.3 if the meeting is satisfied that:-

11.1.3.1 such full or associate member no longer carries on any fiduciary activities.

11.1.3.2 that full or associate member has transgressed the Code of Conduct and that it is not desirable in the interests of the Institute that he/she continue to be a member.

11.2 Before consideration of any resolution as provided for in clause 11.1 above, the Executive Committee shall cause the member concerned to be notified of the Institute's intention to consider the same and afford the said member a reasonable opportunity to object thereto in writing or by personal appearance at the meeting.

## **12. General Matters:**

12.1 The Institute shall in each year hold a General Meeting of members as the Institute's General Meeting, in addition to any other General Meeting of members in that year and shall specify the meeting as being the Annual General Meeting in the notice calling it.

12.2 The Annual General Meeting shall be held any time within six months of the close of the financial year, viz. 31 December.

12.3 The Annual General Meeting shall be held at such time and place as the Executive Committee shall appoint.

12.4 The Executive Committee may requisition a Special General Meeting of the Institute on fourteen days notice in writing, stating the purpose of

any business to be dealt with at such meeting. A Special General Meeting of the Institute shall also be convened by the Chairman of the Institute on the written requisition of twenty five per cent of all the full members and notice of the meeting shall specify the nature of the business required to be transacted thereat.

**13. Notices:**

- 13.1 The Annual General Meeting shall be called on not less than twenty - one days notice in writing. A Special General Meeting of the Institute other than the Annual General Meeting shall be called on not less than fourteen days notice in writing. The notice of the meeting shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of the meeting and in the case of special business the nature of that business shall be given in such manner as the Executive Committee may determine, and to such persons as are under this constitution entitled to receive such notices from the Institute.

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13.2 A notice may be given by the Institute to any member in any of the following ways :-

13.2.1 by personal delivery;

13.2.2 by posting it to such member at the address supplied to the Association in terms of sub - clause 8.1.3 above;

13.2.3 by electronically transmitting it to such member at the electronic mail address supplied to the Association in terms of clause 8.1. above.

13.3 Where a notice to a member is sent by post, service of the notice shall, if the letter containing the notice has been properly addressed, prepaid and posted, be deemed to have been effected, in the case of a notice of a meeting, at the expiration of four (4) days after the letter containing the same is posted.

Where a notice to a member is sent by electronic transmission, service of the notice shall be deemed to have been effected at the time and date when the Institute receives information via the computer tracking facility that the message has been delivered.

13.4 Notice of every General Meeting shall be given in good time to every member and to the Auditors for the time being of the Institute.

No other person shall be entitled to receive notices of General Meetings.

13.5 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by any member entitled to receive notice, shall not invalidate the proceedings or any resolution passed at such meeting.

13.6 Notwithstanding the provisions of clause 13.1 above, a meeting of the Institute which is called on a shorter period of notice than prescribed in 13.1 shall be deemed to have been duly called if it is so agreed by not less than sixty percent in number of the members having the right to attend and vote at the meeting.

#### **14. Representation at General Meetings:**

14.1 Each member may be present or may be represented at a General Meeting of members by a person nominated by the member for the specific meeting.

Associate and honorary associate members shall be entitled to take part in discussions at meetings, but only full members shall be entitled to vote.

**15. Proceedings at Meetings:**

- 15.1 All business shall be deemed special that is transacted at a Special General Meeting and also all business which is transacted at the Annual General Meeting of the Institute, with the exception of the consideration of the accounts and balance sheet, reports of the Executive Committee and auditors, the appointment of Special Purpose Committees, the appointment of the Executive Committee, the consideration of the activities of the Local Boards, the fixing of fees and subscriptions and the appointment of auditors.
- 15.2 No business shall be transacted at any meeting unless a quorum is present at the time when the meeting proceeds to business. Ten percent of all full members shall constitute a quorum at any meeting.
- 15.3 If, within half-an-hour after the time appointed for any meeting, a quorum is not present at the meeting, if convened upon a requisition of members, the meeting shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week and the same time and place, or to such other day and to such other time and place as the Executive Committee may determine, but if at the adjourned meeting a quorum is not present within half-an-hour of the time appointed for the meeting, the representatives present shall constitute a quorum.
- 15.4 The Chairman of the Institute, or in his absence the Deputy Chairman, shall preside as Chairman at the Annual General Meeting and Special General Meetings. If there is no such Chairman or Deputy Chairman, or if neither is present within fifteen minutes of the time appointed for the holding of the meeting, or neither is willing to act as Chairman, the representatives present shall choose one of their number to be Chairman of the meeting.
- 15.5 The Chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

- 15.6 A Chairman or Deputy Chairman shall be elected annually at each Annual General Meeting by the members.
- 15.7 At any meeting a resolution put to the vote of the meeting shall be decided upon by a show of hands unless a poll has been called for before.
- 15.7.1 Unless a poll is demanded a declaration by the Chairman of the meeting that a resolution has on a show of hands been or carried unanimously or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of proceedings of the Institute, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 15.8 Except as provided in clause 15.10 below if a poll is duly demanded it shall be taken in such a manner as the Chairman of the meeting directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 15.9 In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.
- 15.10 A poll demanded on the question of the election of a Chairman of a meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of a poll.

## **16. Votes at Meetings:**

- 16.1 Each full member shall have one vote at meetings of the Institute, which vote may be exercised by the member or by proxy.
- 16.2 Any associate and honorary member shall be entitled to take part in discussions at meetings on any subject brought before the meeting but no associate or honorary member shall be entitled to vote.
- 16.3 A resolution in writing signed by every member of the Executive Committee of the Institute shall be as valid and effectual as if it had been passed at a properly constituted meeting of the Institute.

**17. Powers and Duties at Meetings:**

- 17.1 The following special duties shall be carried out and powers exercised by the Institute at the Annual General Meeting:
  - 17.1.1 Consideration of and, if deemed appropriate, the approval of accounts and reports of the Executive Committee, Special Purpose Committees and Local Boards;
  - 17.1.2 The appointment of a Chairman and Deputy Chairman of the Institute from amongst the full members;
  - 17.1.3 The appointment of an Executive Committee. Only a full member may serve on the Executive Committee;
  - 17.1.4 The appointment or confirmation from time to time of Special Purpose Committees;
  - 17.1.5 The appointment of a secretary;
  - 17.1.6 The appointment of auditors; and
  - 17.1.7 The fixing of members' fees and subscriptions;
- 17.2 The following special duties shall be carried out and powers exercised only at a Special General Meeting:-
  - 17.2.1 Reaching a decision on any matter referred to the meeting by the Executive Committee. The representatives shall have the power to instruct the Executive Committee to refer a particular matter to a General Meeting of the Institute for decision;
  - 17.2.2 Removing the entire Executive Committee or any member or members thereof;
  - 17.2.3 Making executive and secretarial appointments;
  - 17.2.4 Giving directions on any selected item of expenditure;
  - 17.2.5 Authorising any long term borrowings.

**18. Special Purpose Committees:**

- 18.1 A Special Purpose Committee appointed by the Institute under clause 17.1.4 shall elect a Chairman of its meetings. If no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for the commencement, the members

present may choose one of their number to be Chairman of the meeting.

- 18.2 A committee may meet and adjourn as it thinks proper. Two members of the committee shall form a quorum. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of equality of votes the Chairman of the meeting shall have a second or casting vote.
- 18.3 All acts done by any Special Purpose Committee or by any person acting as a member of such committee shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of the committee or person acting as aforesaid, or that the committee or any of its members were disqualified, be valid as if every such person had been duly appointed.
- 18.4 A resolution, in writing, signed by all members of any Special Purpose Committee shall be as valid and effectual as if it had been passed at such meeting duly convened and held.

## **19. Executive Committee:**

- 19.1 The business and the operation of the Institute shall be on a day to day basis managed by an Executive Committee, which shall be elected at the Annual General Meeting of the Institute.

The Executive Committee shall comprise the Chairman, Deputy Chairman, Immediate Past Chairman, two representatives and the Chairman of each of the local boards.

The Executive Committee shall, on behalf of the members, exercise all such powers of the Institute as are not by this constitution required to be exercised by the Institute in General Meeting, subject, nevertheless, to the provisions of this Constitution and to such regulations, not being inconsistent with the Constitution, as may be prescribed by the Annual General Meeting or a Special General Meeting of the Institute, but no regulation made by the Institute at the Annual General Meeting or Special General Meeting of the Institute shall invalidate any prior act of the Executive Committee which would have been valid if the regulation had not been made.

- 19.2 The Executive Committee may from time to time and at any time by Power of Attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Executive Committee, to be the attorney or attorneys of the Institute for such purposes and with such powers, authorities and discretion not exceeding those vested in or exercisable by the Executive Committee under this Constitution and for such period and subject to such

conditions as it may think fit, and such Powers of Attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Executive Committee may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretion vested in him.

19.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Institute shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Executive Committee shall from time to time by resolution determine.

19.4 The Executive Committee shall cause minutes to be duly made in books for the purpose:

19.4.1 of all appointments of officers of the Institute;

19.4.2 of all names of the persons present at each meeting of the Executive Committee appointed under this Constitution; and

19.4.3 of all resolutions and proceedings of all meetings of the Institute and of the Executive Committee and of any other committee, and any such minutes of any such meeting of the Institute, of the Executive Committee and of any other committee, if purporting to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes.

## **20. Proceedings of the Executive Committee:**

20.1 The Executive Committee may meet for the despatch of business and adjourn or otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the Chairman, or the Deputy Chairman if he is in the chair, shall have a second or casting vote. A participant of the Executive Committee may direct the Secretary at any time upon good cause summon a meeting of the Executive Committee.

20.2 The quorum necessary for the transaction of the business of the Executive Committee shall be three (3) provided that either the Chairman or Deputy Chairman shall be present.

20.3 The Chairman of the Institute, failing whom the Deputy Chairman, shall preside at all meetings of the Executive Committee.

20.4 All acts done by any meeting of the Executive Committee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any participant of the Executive Committee

or that they or any of them were disqualified, be as valid as if such person had been duly appointed.

- 20.5 A resolution in writing signed by all participants of the Executive Committee shall be as valid and effectual as if it had been passed at a meeting of the Executive Committee duly convened and held, provided, however, that where a member has more than one (1) participant on the Executive Committee, only one (1) such participant shall be required to sign the resolution.

## **21. The Secretary:**

- 21.1 The secretary shall be appointed by the Institute at the Annual General Meeting for such term and at such remuneration and upon such conditions as it may think fit, and any secretary so appointed may be removed by the Institute. The secretary shall be liable to the Executive Committee for and on behalf of the Institute.

## **22. Local Boards:**

- 22.1 Local Boards of members of the Institute may function in any cities, towns or regions of South Africa where, in the opinion of the Executive Committee, sufficient local demand from members arises from time to time to warrant the establishment of Local Boards.
- 22.2 Any Local Board functioning by virtue of this clause shall have as its constituent members primarily those representatives who reside in the relevant province, city, town or region and, in case of need, any director, manager, assistant manager, secretary, assistant secretary or other senior officer of any member of the Institute who, not being a representative, resides and carries on business in the relevant province, city, town or region. The members of such Local Boards shall elect a Chairman from amongst their number who shall hold office as such until the date of the next Annual General Meeting of the Institute.
- 22.3 Any such Local Board shall make its own rules of procedure and shall order the manner in which it functions, provided that in instances of doubt it shall be regulated by similar provisions, mutatis mutandis, to those set out in clause 22. Any such Local Board is empowered to represent the Institute solely upon such matters as directly affect a member represented on such Local Board, or in any other manner or matter that the Executive Committee may from time to time determine, and shall at any time be subject to intervention from and control by the Institute.

- 22.4 The Chairman of any such Local Board may attend and speak on any issue at a General Meeting but may not vote thereat, unless otherwise qualified to do so.

**23. Accounts:**

- 23.1 The Executive Committee shall cause proper books of account to be kept with respect to:
- 23.1.1 all sums of money received and expended by the Association, and the matters in respect of which the receipt and expenditure takes place, and
  - 23.1.2 the assets and liabilities of the Institute.
- 23.2 The books of account shall be kept at the office of the Institute or at such other place or places in the Republic of South Africa as the Executive Committee think fit, and shall be open to inspection of members.
- 23.3 The representatives at properly constituted meetings of the Institute shall from time to time determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Institute or any of them shall be open to the inspection by members.
- 23.4 The Executive Committee shall from time to time cause to be prepared and to be laid before the Institute's Annual General Meeting the accounts and Balance Sheet and reports of the Institute.
- 23.5 A copy or a reasonable summary of every Balance Sheet, including every document annexed thereto, which is to be laid before the Institute's Annual General Meeting shall, not less than twenty - one days before the date of the meeting be sent to all such members as are entitled to receive notices of General Meetings of the Institute provided that this paragraph shall not require a copy of these documents to be sent to any person of whose address the Institute is not aware.

**24. Audit:**

- 24.1 Auditors shall be appointed from time to time at the Annual General Meeting of the Institute and shall continue to hold office until resignation or removal by the representatives at a properly constituted meeting of the Institute. In the event of resignation of the auditors the Executive Committee may appoint further auditors who shall hold appointment until the next succeeding Annual General Meeting when such

appointment shall be either confirmed or continued or terminated. If such appointment be terminated, the Institute shall at the said Annual General Meeting appoint further auditors who shall hold office on the terms and conditions set out above.

**25. Exemption from Liability and Indemnity:**

Provided that the claim or loss does not arise from his own dishonesty or wilful neglect in the performance of his duties or exercises of his powers:

- 25.1 no member, representative, auditor, secretary, trustee or other officer of the Institute will be personally liable for any claim against or loss suffered by the Institute; and
- 25.2 the person referred to in clause 27.1 will be indemnified out of the assets of the Institute against any claim or loss contemplated in 27.1.

**26. Dissolution:**

- 26.1 The Institute may be dissolved or merged with another Institute with similar purposes and objects in each case only:
  - 26.1.1 on a resolution passed by a majority of votes at a duly constituted General Meeting of the Institute, or
  - 26.1.2 on an application to court by any member on the ground that the Institute has become dormant or is unable to fulfil its purpose and objects.
- 26.2 On merger the assets of the Institute shall vest in the Institute with which the merger is effected.
- 26.3 On dissolution of the Institute if there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed amongst the members of the Institute but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Institute to be determined by members of the Institute at or before the time of dissolution.

**27. Arbitration**

- 27.1 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:

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

27.1.2 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.

27.2 The arbitrator referred to in clause 29.1 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 29.1.1, or the chairman of the Association of Law Societies of South Africa in the case of sub-clause 29.1.2.

## **28. Amendment of Constitution:**

This constitution may be amended from time to time by a resolution passed by not less than a two-thirds majority of the members present and voting at a duly constituted meeting of the Institute.