

# AMENDMENTS: STATUTE

This document highlights the main changes made to the Statute effective from 24 May 2021.



## Disclaimer

*This revision formed part of a holistic exercise covering the revision of the Statute and Bye-Laws. All governance related matters have been incorporated in the Statute. Most of the Statute has been reworded, superfluous content removed and a number of important matters and clarifications were introduced. Below are the salient changes made to the Statute.*

## Article 1 - Definitions

- (a) Definitions section introduced.

## Article 4 - Status

- (a) Article revised to reflect the current status of the Institute.

## Article 5 - Legal and Judicial Representation of the Institute

- (a) Legal and judicial representation, previously vested in “Council”, has been vested in “two (2) members of the Officers committee” who can “appoint the CEO”.

## Article 6 - Vision and Principal Objectives of the Institute

- (a) The following Articles in the previous Statute “Vision”, “Mission”, “Values and Principal Objectives” were merged into one Article entitled “Vision and Principal Objectives of the Institute”. Any duplicate and superfluous content was removed.
- (b) Introduced a clause with respect to the Institute’s autonomy when creating partnerships with other bodies.

## Article 7 - Governance Framework of the Institute

- (a) Content of this Article was revised to focus on the governance framework of the Institute.

## Article 8 - Members of the Institute

- (a) Specified the role of Council with respect to members.
- (b) The following clauses were removed from the *Members Bye-Law* and incorporated in the *Statute*:
  - All clauses pertaining to Council’s approval vis-à-vis admissions and re-admissions.
  - Section pertaining to “Honorary Members” (which define who can be bestowed the honorary membership status and the votes required by Council to bestow/revoke such membership).

## Article 8.1 - Admission, Re-admission and Resignation of Members

- (a) There has been a change in the way resignations are handled by Council.
- (b) Specified that Council shall have the right to publish the names of resigned persons on the Institute’s website and in any other publications of the Institute.

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## Article 9 - General Meetings of the Institute

- (a) The *Meetings of the Institute Bye-Law*, constituting of the following Articles, was incorporated in the *Statute*:

Date of Annual General Meeting  
Business of the Annual General Meeting  
Preliminary Notice of Annual General Meeting  
Annual Report  
Notice of Annual General Meeting""  
Extraordinary General Meeting  
Notice of Extraordinary General Meeting  
Place of General Meetings  
Chairperson of General Meetings  
Quorum  
Voting  
Resolutions  
Appointment and Duties of Scrutineers  
Adjournment of Meetings  
Minutes of Meetings

### Article 9.1.3 - Notices of Annual General Meeting

- (a) All Articles related to AGM related notices and the annual report have been amalgamated into one Article.
- (b) Revised the timeframe re the issue of the preliminary notice, from *"6 weeks before the AGM"* to *"9 weeks before the AGM"*.

### Article 9.4.3 - Voting of Members & 9.4.3.2 - Voting for Election of the Council

- (a) Article revised, from *"Every member present at a General Meeting shall be entitled to one vote"* to *"Every Member present and entitled to vote shall have one vote."*

#### Article 9.4.3.2 - Voting for Election to Council

- (a) The following content was removed, *"the procedure for the election shall be determined by Council."*
- (b) The term *"electronic voting"* was included along with *"physical ballots"*.

#### Article 9.4.4 - Scrutineers

- (a) Introduced a clause specifying that any decisions taking at the AGM are taken by the CEO but need to be endorsed by the independent scrutineers.

#### Article 9.4.5 - Adjournment of General Meetings

- (a) Revised the timeframe by when an adjourned General Meeting is to take place, from *"not less than 1 week and not more than 4 weeks from original date of General Meeting"* to *"not less than 2 weeks and not more than 4 weeks."*

### Article 10 - The Council

#### Article 10.2 - Members of the Council & Article 10.4 - Composition of Council & Article 10.6 - Election of members to Council

- (a) Introduced a clarification re the number of members forming Council from *"14 members"* to a maximum of 14 members.

*"As a rule, the Council shall be composed as follows:*

*(a) At least two (2) out of fourteen (14) members shall be in public practice;*

*(b) At least two (2) out of fourteen (14) members shall not be in public practice; and*

*(c) There shall not be more than two (2) members of any organisation during the same term of office."*

- (i) The right that Council can appoint *"additional members to ensure that the composition criteria laid out in (a), (b) and (c) are met"* was removed.
  - (ii) The following clause was also removed: *"If sufficient candidates are not elected at an Annual General Meeting the resultant vacancies may be filled by the Council."*
- (b) Gave Council the option to waive the criteria in cases where the minimum number of practicing / non-practicing members of the Council is not reached. This applies both at nominations stage and after election of candidates.

#### Article 10.2 - Members of the Council

- (a) Introduced a clarification that Council members shall hold office *"until the conclusion of the second Annual General Meeting from when he/she is elected"* and not for a *"2-year"* duration as stipulated in the previous Statute.
- (b) Clarified that Council members who do not wish to contest an upcoming election are to address their intention to the Secretary of the Institute and not to Council.
- (c) Revised the timeframe of the submission of the above-mentioned notification from *"4 weeks before the date of the AGM"* to *"9 weeks before the date of the AGM."*

#### Article 10.3 - Ex-Officio members of the Council

- (a) Revised the arrangements in the event that the immediate past President is not elected as a member of the Council. He/she shall remain an ex-officio member of the Council.
- (b) The duration of ex-officio membership was extended from 1 year to 1 term (2 years or more, depending on the dates of the AGM).

#### Article 10.4 - Composition of Council

- (a) Revised the definition of *"members in public practice"* from *"those members, irrespective of functional classification (e.g. audit, tax or consulting) in a firm or a sole-practice that provides professional services"* to *"construed in accordance with the Code of Ethics issued in terms of the Accountancy Profession Act."*

### Article 10.5 - Nominations for Election to Council & Article 10.2 - Members of the Council

*“Any Member of the Institute shall be eligible for election as a member of Council provided that:*

- (a) he/she is a fellow member of the Institute;*
- (b) he/she is a warrant holder;*
- (c) he/she has a clean criminal record;*
- (d) he/she has not been interdicted or incapacitated;*
- (e) no effective disciplinary action has been taken against him/her and no sanction has been imposed in his/her regard whether by the Institute or otherwise; and*
- (f) where applicable, the Member has not served on Council for nine (9) terms, as defined in Article 10.2, whether consecutively or otherwise.”*

- (a) Specified that the criteria (a) - (f) above applies for new nominations and existing Council members wishing to re-contest the election.
- (b) Revised the existing criteria that in order to nominate oneself for Council, one must be a *“Fellow member of the Institute”*. Previous Statute specified that one must be a member for five (5) years.
- (c) Introduced a new criteria that in order to nominate oneself for Council, one must have a clean criminal record.
- (d) Revised the existing criteria that in order to nominate oneself for Council, one must *“not been interdicted or incapacitated”*. Previous Statute specified that one must be *“in a good state of mental health”*.
- (e) Introduced the words in blue as per below: *“No effective disciplinary action has been taken against him/her and no sanction has been imposed in his/her regard whether by the Institute or otherwise”*.
- (f) Clarified that the threshold to remain on Council is *“9 terms”* and not *“18 years”*.
- (g) Revised the timeframe to submit nominations for election from *“3 weeks before the date of the AGM”* to *“3 weeks from when the request for nominations is issued.”*

### Article 10.7 - Disqualification of members from Council

*“The office of a member of the Council is vacated if:*

- (a) he/she ceases to be a member of the Institute, including cases where membership is suspended or excluded by the Institute itself in line with the Statute and Bye-Laws; or*
  - (b) he/she is the subject of disciplinary action taken against him/her by the Institute in accordance with its Statute and Bye-Laws; or*
  - (c) he/she has failed to act in the manner prescribed in Article 10.11.1; or*
  - (d) he/she is absent from the meetings of the Council for more than two (2) consecutive meetings, or is absent from the meetings of the Council for more than fifty percent (50%) of Council meetings called during the Council’s term; or*
  - (e) it transpires that an elected member of the Council had declared untruthful or inaccurate information when submitting his/her nomination for election which would have made him/her ineligible to stand for election had the information been true and correct.”*
- (a) Widened the grounds for disqualification (b) from a reprimand to any form of disciplinary action taken against him/her.

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- (b) Disqualification criteria (c) was introduced with respect to Article 10.11.1, extract of which can be found below:

- *Failure to uphold good governance standards;*
- *Failure to discharge duties in good faith and in the best interest of the Institute;*
- *Using the position or the information received as a member of the Council for one's own personal interests or someone else's or to the detriment of the Institute; and*
- *Disclose confidential information to others.*

### Article 10.8 - Removal of members from Council

- (a) Introduced a clarification that members of the Council can be removed by members during an Extraordinary General Meeting (and not any other General Meeting).

### Article 10.9 - Resignation from Council

- (a) Clarified that Council members who wish to resign from Council are to address their intention to the Secretary of the Institute and not Council.

### Article 10.10 - Vacancies in Council

- (a) Introduced the text highlighted in blue below: *"Should any vacancy in the Council take place between two Annual General Meetings, the Council may fill such vacancy from amongst those candidates who were not elected to Council at the last Annual General Meeting, inviting first the member who obtained the highest number of votes, **provided that the criteria stipulated in Article 10.5 are met.**"*
- (b) The following was removed: *"In the event of there not being more than three vacancies in the Council at any one time, any action or proceedings of the Council shall not be invalidated or be illegal in consequence of such vacancies."*

### Article 10.11 - Powers of the Council

- (a) The following were added as a powers of the Council:
- Manage the affairs of the Institute in accordance with the provisions of the Statute.*
  - Define strategies and policies to generate income for the Institute.*
  - Elect the Officers' Committee.*
  - Establish and appoint Committees as it deems fit and revoke the establishment and appointment of members on any such Committees" as a power of the Council.*
  - Take decisions in relation to students in accordance with the Students Bye-Law as a power of the Council.*
  - Undertake arrangements to set up qualifications administered by the Institute or by agents appointed by the Institute solely for this purpose.*
- (b) The following Article was transferred from the *Proceedings and Powers of the Council Bye-Law* to the Statute *"Council may issue Codes, Guidelines, and Statements to regulate Professional Work"* and updated as follows: *"Issue, establish and amend Codes of Ethics and other technical guidance."*
- (c) Replaced the following: *"Pay remuneration and reasonable expenses of employees"* with *"Enter into employment contracts and contracts for services with third parties."*

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(d) Replaced the following: *"To prescribe the policies and procedures of the Institute and to enact resolutions binding upon its organs and Officers"* with *"Define strategies and policies in line with the Institute's objectives and take the necessary decisions for the furtherance of same."*

(e) Replaced the following: *"To approve admission of new members and re-admissions following suspension, exclusion or resignation"* with *"Take decisions in relation to membership matters in accordance with Article 8 of the Statute and the Members' Bye-Law."*

### **Article 10.11.1 - Principles to be upheld by Council Members**

(a) Introduced an Article which lays down the principles to be upheld by Council members while forming part of Council.

### **Article 10.12 - Delegation of Powers**

(a) Introduced an Article on Delegation, specifying that Council can delegate any of its powers to Officers, the CEO and any other committees.

### **Articles 10.13.1 - 10.13.7 - covering Proceedings of the Council**

(a) The following Articles were transferred from the *Proceedings and Power of Council Bye-Law* to the Statute:

- Meetings of Council
- Calling of Meetings
- Notice of Meetings
- Chairman of Meetings
- Voting
- Adjournment of Meetings
- Quorum
- Minutes of Meetings

### **Article 10.13.1 - Meetings of the Council**

(a) Article updated to specify that Council meetings are held *from "at least once a month" to "not less than 11 meetings."*

(b) Specified that Council meetings can be held in a virtual manner.

### **Article 10.13.2 - Notice of Meetings of the Council**

(a) Article revised as indicated in blue: *"At least seven (7) working days' notice of a meeting of the Council shall be sent to each member of the Council **except in the case of an urgent meeting.**"*

### **Article 10.13.3 - Chairperson of meetings of the Council**

(a) Revised the arrangements to select the Chairperson of a Council meeting when the President and Vice-President are absent, from, *"Council electing a chair from amongst themselves"* to *"members of the Officers' Committee who are present shall choose one from amongst themselves to chair the said meeting."*

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### Article 10.13.4 - Voting at meetings of the Council

- (a) Revised the number of votes required for a decision to pass from *“simple majority”* to *“at least 8 members of the Council.”*
- (b) Introduced a reminder in line with Article 10.3, that ex-officio members of the Council are not entitled to vote.
- (c) Introduced a clause re conflict of interest - Council members must desist from participating and voting when they have a conflict of interest.

### Article 10.13.6 - Quorum of meetings of the Council

- (a) Quorum of Council meetings increased from 5 to 8 members.
- (b) Introduced a clause that allow Council members who cannot be physically present for the Council meeting to join remotely. If so, their attendance will form part of the quorum.

### Article 10.14 - Indemnification of the Council

- (a) The following was removed: *“No member shall be liable for any offence of any other member of the Council for joining in any receipt of document or for any act of conformity or for any loss or expense happening to the Institute unless the same happens out of his own wilful misconduct.”*

### Article 11 - The Officers' Committee

- (a) The Article "Election of Officers" transferred from the *Proceedings and Power of Council Bye-Law* to the *Statute*.
- (b) Internal procedures re election of Officers were incorporated in the Statute.

### Article 11.1 - Election of Officers

- (a) Introduced an eligibility criteria that for one to self-nominate himself/herself for an Officer's post, one must have served on Council for at least 1 term. This may be waived, subject to the *“approval of the majority of Council members.”*

### Article 11.1.1 - Notice and Submission of Nominations for Officers' posts

- (a) Timeframes revised as follows:
  - The issue of notice to submit nominations for any of the Officers' post, from *“at least 7 days”* to *“not later than 5 weeks.”*
  - The issue of the notification to Council members to notify about the Officers' posts candidates, from *“2 days before the AGM”* to *“not less than 2 weeks and not more than 3 weeks before the AGM.”*
- (b) The following Article was introduced: *“In the eventuality of insufficient nominations, Council shall be informed accordingly, so that nominations for all positions are submitted by not later than two (2) weeks from the issuance of the notice.”*



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### Article 11.1.2 - Election

- (a) The quota for the election of the Treasurer and Secretary was revised in line with that of the President and Vice-President, that is for any Officer to be elected, he/she must get 50%+ of the votes.
- (b) The following Article was introduced: *"Circumstances can arise leading to insufficient nominations for any of the posts. These include:*
  - a) a Member who nominated himself/herself for election as an Officer is not elected as a Council Member in the Annual General Meeting;*
  - b) a Member who nominated himself/herself for election as an Officer is not elected as an Officer by Council.*

*In such circumstances, Council members shall be required to nominate themselves and an election shall take place accordingly."*

### Article 11.2 - Officers' Term of Office

- (a) The 2-term threshold applicable to the President's post was extended to all Officers' posts.

### Article 11.3 - Objectives of the Officers' Committee

- (a) The following was introduced: *"The Officers Committee shall carry out any other duties delegated to it by Council and adopt decisions on matters where such powers have been vested to it by Council."*
- (b) Introduced a clause to specify the quorum at Officers' Committee meetings.

### Article 13 - Committees

- (a) Transferred the Article "Appointment of Committees" from the *Proceedings and Power of Council Bye-Law* to the *Statute*.
- (b) Introduced a clarification that members of Committees/groups appointed by Council can be members of the Institute or otherwise.
- (c) Introduced a clarification re decision making at Committee level, that all decisions need to be ratified by Officers.

### Article 14 - Structure for Disciplinary Proceedings

- (a) Transferred the following Articles from the *Disciplinary Proceedings Bye-Law* to the *Statute*:
  - Appointment of the Chairperson and Deputy Chairperson of the Disciplinary Committee
  - Appointment of the Disciplinary Pool
  - Constitution of the Disciplinary Committee
  - Appointment of the Appeals Pool
  - Constitution of the Appeals Board



### Article 14.1 - Call for Expression of Interest

- (a) Introduced an Article re the expression of interest communication issued by the Institute with respect to the Disciplinary Proceedings setup.

### Article 14.3 - Eligibility Criteria for the Role of the Chairperson and Deputy Chairperson of the Disciplinary Committee

- (a) Revised the eligibility criteria for the post of a Chairperson and Deputy Chairperson of the Disciplinary Committee, from *"Members of the Disciplinary Pool and Appeals pool shall not be eligible for nomination"* to *"Members of the Appeals Pool shall not be eligible for nomination."*

### Article 14.4 - Appointment and Term of the Disciplinary Pool

- (a) Revised the Article in line with Article 14.2, that is, to allow for circumstances where the 3-year term of the Disciplinary Pool may be extended.

### Article 14.6 - The Disciplinary Committee

- (a) Defined the role of the Disciplinary Committee.
- (b) Updated the Article as follows: *"When the Chairperson of the Disciplinary Committee is informed that a Charge has been presented to Council in line with Bye-Law 3 (Disciplinary Proceedings), he/she must ensure and declare that he/she does not have any conflict of interest in relation to the relevant case."*

*Any other member of the Disciplinary Pool who is requested to form part of the Disciplinary Committee must ensure and declare that he/she does not have any conflict of interest in relation to the relevant case."*

- (c) Introduced a way forward for when both the Chairperson and Deputy Chairperson of the Disciplinary Committee have a conflict of interest, in which case the Chairperson is to be appointed by Council from the remaining members of the Disciplinary Pool.
- (d) Removed the obligation to engage a lawyer. The Disciplinary Committee may request such engagement if required to assist it in carrying out its function.
- (e) Introduced a clause to allow the Disciplinary Committee to request the appointment of experts to assist it in carrying out its function.
- (f) Updated the Article as follows: *"The Chairperson ~~shall~~ has the discretion to appoint a new Disciplinary Committee for every Charge presented to the Council and a Disciplinary Committee shall remain so constituted until the disciplinary proceedings before such Disciplinary Committee are concluded, irrespective of the duration of such disciplinary proceedings."*

### Article 14.7 - Nominations, Appointment and Term of the Chairperson and Deputy Chairperson of the Appeals Board and the Appeals Pool

- (a) Aligned the composition of the Appeals setup with that of the Disciplinary setup – Chairperson and Deputy Chairperson of the Appeals Board and an Appeals Pool made up of 10 members.

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All persons will be nominated by Council and appointed by members during a General Meeting.

- (b) Introduced terms with respect to re-appointments of the Chairperson and Deputy Chairperson of the Appeals Board. Such persons can only hold the office for a maximum of 2 terms.

### **Article 14.8 - Eligibility Criteria for the Role of the Chairperson and Deputy Chairperson of the Appeals Board**

- (a) Introduced the eligibility criteria for the roles of the Chairperson and Deputy Chairperson of the Appeals Board: *“Member who has practiced in the accountancy profession for a period of not less than fifteen (15) years.”*

### **Article 14.10 - The Appeals Board**

- (a) Defined the role of the Appeals Board.
- (b) Updated the Article as follows: *“When the Chairperson of the Appeals Board is informed that an appeal request has been received in accordance with Bye-Law 3 (Disciplinary Proceedings), he/she must ensure and declare that he/she does not have any conflict of interest in relation to the relevant case.*

*Any other member of the Appeals Pool who is requested to form part of the Appeals Board must ensure and declare that he/she does not have any conflict of interest in relation to the relevant case.”*

- (c) Introduced a way forward for when both the Chairperson and Deputy Chairperson of the Appeals Board have a conflict of interest, in which case the Chairperson is to be appointed by the members of the Appeals Pool.
- (d) Introduced a clause to allow the Appeals Board to request the engagement of a lawyer and appointment of experts to assist it in carrying out its function.
- (e) Introduced a clause to specify the quorum at Appeals Board’s sittings.

### **Article 15 - Dissolution**

- (a) Introduced a clarification that the Institute can be dissolved during an *“Extraordinary General Meeting”* and not a general meeting.

### **Article 16 - The Auditor**

- (a) The *Audit Bye-Law*, constituting of the following Articles, was incorporated in the *Statute*:
  - Appointment of Auditor
  - Retirement of the Auditor
  - Removal of the Auditor

### **Article 16.1 - Appointment of the Auditor**

- (a) Widened the non-eligibility criteria for appointment of auditors to include directors: *“Members of Council and firms of auditors that have a director, partner or employee as a member of Council, shall not be eligible for appointment as auditor.”*

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### **Article 16.3 - Removal of the auditor and vacancy of the auditor's Office**

- (a) Article revised from *"The members present may appoint another Auditor in their stead"* to *"The members present shall appoint another auditor in his/her stead if it is resolved that the auditor is so removed."*

### **Article 16.4 - Auditor's Right to attend Meetings**

- (a) Introduced a clause specifying the auditor's right to attend and speak at General Meetings of the Institute.

### **Article 17 - Miscellaneous Articles**

#### **Article 17.1 - Institute's Common Seal**

- (a) Transferred the Article "Institute's Common Seal" from the *Proceedings and Power of the Council Bye-Law* to the *Statute*.

#### **Article 17.2 - Certificates of membership**

- (a) Introduced a new Article to specify that the certificates of membership (a) are issued once and (b) remain property of the Institute.