



## **Guidelines for ACFE SA Board of Directors**

The following documents will be sent to all newly elected and current Board Members to take note of:

- ACFE SA MoI;
- ACFE Bylaws;

### **1) Explanations and definitions:**

#### **Definitions:**

**1.1 Fiduciary duty:** Board of directors' fiduciary duty refers to the highest standard of care. Board members and officers are fiduciaries, and by statutory and common law mandate, they must act with the utmost responsibility.

**1.2 Independent NED** - Independent Non – executive director

#### **1.1 Independent Directors:**

- Non-Executive Directors are independent or non – independent.
- Independent non - executive directors are usually able to bring an independent view to the deliberations of the Board.
- They are legally liable in the same way as executive directors. They have the same fiduciary duties to the organisation and the duty of skill and care.
- **The independent NED is a non – executive director who, as defined in KING IV and the JSE listing requirements:**
  - Does not represent or was not nominated by a major shareholder;
  - Was not employed by the group in the past 3 financial years;
  - Is not an immediate family member of a person who is, or was in the past 3 financial years employed in an executive capacity;
  - Is not a professional advisor;
  - Is not a significant supplier to or customer of the group;

- Has no significant contractual relationship with the group;
- Is free from any business or other relationship, which could materially interfere with his/her ability to act independently.

***\*All ACFE SA directors are independent non-executive directors, whereas the ACFE SA CEO is the only Executive director - According to the ACFE SA MoI the Board of Directors of the Company will comprise of a minimum of four (4) elected non-executive directors, and a maximum of 15 elected non-executive directors, with no alternate directors.***

**Purpose:**

A key principle of good corporate governance is that there should be a sufficient number of independent NED'S on the board to create a suitable balance of power and prevent the dominance of the Board by one individual or by a small number of individuals.

***\*The members of the Audit Committee should also ideally be independent NEDs***

## **Board members' roles and responsibilities**

A board member in an organisation is a person who is charged with directing the organisation towards a more sustainable future through the adoption of ethical, legal, and sound management decisions and policies while ensuring the organisation has ample resources to carry out its mission statement.

In a non-profit organisation, board members are still called fiduciaries because they have a legal responsibility to properly manage the non-profit's assets. Board members in a non-profit must make numerous important decisions including; recruiting new board members, conducting an annual audit, and monitoring financial reports etc. All of these activities fall under the three main duties — care, loyalty, and obedience.

However, a board of directors does not exist solely to fulfil legal duties and serve as a fiduciary of the organisation's assets. Board members also play very significant roles providing guidance to nonprofits by contributing to the organisation's culture, strategic focus, effectiveness, and financial sustainability, as well as serving as ambassadors and advocates. Beyond fulfilling legal duties, board members can be important resources for the organisation in multiple ways.

## **1. Fiduciary duties of all Board Members:**

“Board members are the fiduciaries who steer the organisation towards a sustainable future by adopting sound, ethical, and legal governance and financial management policies, as well as by making sure the nonprofit has adequate resources to advance its mission”

– **National Council of Nonprofits**

In terms of the Common Law, a Director’s fiduciary duty means that a director acts in good faith and in the best interest of the organisation.

**This includes:** that he/she shall not use their position of information to, for example, gain an advantage for anyone other than the organisation and/or cause harm to the organisation.

Without limitation avoiding conflicts of interest, not exceeding the organisation's power and accounting for secret profit. Because it is not the intention of the legislator to unreasonably overrule law practices that have been built up over a number of years, these common-law provisions will continue to apply as long as they do not conflict with the new Act.

Must exercise a degree of care, skill and diligence that may reasonably be expected of a person who carries out the same functions, and has the same knowledge, skill and experience.

•Duty to act intra vires on behalf of the organisation & only to the extent to which is permitted by the powers & authority extended via law, the MOI, Shareholders’ Agreement and / or board charter

**A director must also disclose information to the organisation unless he/she:**

- Has a reasonable belief that it is immaterial to the organisation;
- Believes that it is generally available to the public;
- Is legally bound not to disclose the information.

## **2. Members rights regarding access to company records:**

Take note according to the Company Act 2008 section 24 (3) (b) (i) (ii) and (5) (a – g), the following documents may be requested:

24 b) - Records of its directors, including—

- (i) details of any person who has served as a director of the company, for a period of seven years after the person ceases to serve as a director; and
- (ii) the information required by or in terms of subsection (5);

(5) A company's record of directors must include, in respect of each director, that person's—

- (a) full name, and any former names;
- (b) identity number or, if the person does not have an identity number, the person's date of birth;
- (c) nationality and passport number, if the person is not a South African;
- (d) occupation;
- (e) date of their most recent election or appointment as director of the company;
- (f) name and registration number of every other company or the foreign company of which the person is a director, and in the case of a foreign company, the nationality of that company; and
- (g) any other prescribed information

**Take note** all communication (invites, sending emails to recruit members etc.) will be distributed and send ONLY from the ACFE SA office, after the content has been received from the respective region/s and has been accepted and finalised either by the CEO of the ACFE SA or Office Manager in the absence of the CEO only then the required content will be distributed to the relevant members.

The ACFE SA reserves the right to amend the provided content to ensure it adheres to all the rules and regulations set out by the ACFE SA and to ensure that the brand and what the ACFE SA stands for is not damaged through the content send to all members.

Accessing Members personal information can be seen in the ACFE SA's Mol, Schedule 2, Right of Members, Part A

#### **Liability of a director:**

Although the director's liability as set out in the old Act will still apply, the new Act has added to this and stated that directors will also be liable for:

- Any losses and damages resulting from a breach of a director's fiduciary duties;
- Unauthorised trading on behalf of the organisation or taking part in reckless trading;

The organisation will also in future not be allowed to indemnify directors from damages and losses suffered from:

- A breach of fiduciary duties

- A breach of duties of care and skill
- A breach of trust
- Wilful misconduct
- Conflict of interest

#### Independence, Non-compliance and Conflict of Interest

Directors of the ACFE SA are not allowed to hold director's positions of any professional body in direct competition of the ACFE SA.

### **3. Qualifications for Candidates:**

- i. All Board Members must be paid-up members of the SA local chapter, and must have been members of the chapter for a minimum of two (2) years;
- ii. Only Certified Fraud Examiners (CFE), being members in good standing of the Association of Certified Fraud Examiners International and SA Chapter, may hold the office of Chair, Vice-Chair, Treasurer, Secretariat and Training Director.
- iii. Associate members, being members in good standing of the Association of Certified Fraud Examiners International, may hold all other positions;
- iv. Requirements the respective Board members (CFEs & Associates) needs to adhere to (as per the MoI, Schedule 3 - Directors of the Company Part B):
  - a. If a CFE is nominated such CFE has to be a member of the local chapter in good standing for a minimum of two consecutive years, or
  - b. an Associated who has been a member in good standing of the local chapter for at least three consecutive years with 5 years relevant forensic experience.
- v. Affiliates shall not be eligible to hold any Chapter office, but may serve on committees;
- vi. The elected Members of the Chapter will consist of a Chair, Vice-Chair, Secretary, and Treasurer. However, the Board of Directors shall have the option to combine the offices of Secretary and Treasurer into one position and designate one person to conduct both functions. The respective Board members, together with the Immediate Past President and Legal Counsel will form the Exco;
- vii. Directors may be re-elected to successive terms in either the same or a different office. The Exco serves a term of three (3) years;
- viii. Each appointed director of the Board or office may be re-elected to successive terms. The Exco will serve for a three (3) year term, whereafter they can be reappointed on Exco by

nomination of the other Board Members. Similarly, the Past President will automatically serve on the Board as a non-executive director for a three-year term.

- ix. Non-Executive Directors of the Company will serve for a three- (3) year term, where after they will qualify for re-election at a members meeting.
- x. Any elected non-executive Board member may only serve a maximum of six (6) consecutive years as Board member, whereafter he/she will observe a two (2) year cooling-down period.
- xi. The Board will always consist of an odd number of Directors. The Board of Directors shall consist of the Chapter Officer positions designated above plus at least three (3) other at large positions;
- xii. The Chair (President) will be selected by the board during the first Board meeting, after which remaining portfolio allocations will be made;
- xiii. **Election of a Chair and Vice-Chair of the respective Regional Committee:** Only CFE's in good standing of both the local and International chapter can stand for election. As per the Mol of the ACFE SA, the nominee for the position of Chair and Vice-Chair also needs to prove that they have been a member of an ACFE Regional Committee for a minimum of 2 (two) consecutive years where after the committee member may be elected as Chair and Vice-Chair in the 1st year of their second term. Appointments of Chairs and Vice-Chairs will only be concluded once the Interview and Vetting process has been done. Formal appointments will be done by the Board
  - a. The Regional Chair and Vice-Chair of the respective Regional Committees will be obligated to adhere to all the requirements and guidelines set out in the respective documentation. The same process will be followed for the Vice-Chair to ensure he/she has the necessary skills to act as acting Board Member should the current Chair/Board Member step down for what so ever reason contemplated in Part B, Schedule 3 of the MolRegional Chairs and Vice-Chairs elected by the respective regional committee will only be appointed once the Board and EXCO have approved the nominations made. The following process will be followed:
  - Formal interviews will be conducted with all candidates nominated to serve on the respective Regional committee as Chair and Vice-Chair. Only the Chair will receive a seat on the ACFE SA's Board of Directors, the Vice-Chair will only represent the Regional Committee as acting Board Member should the Chair of the respective

Committee and Board Member step down or be removed due to the sections relevant in **Part B, Schedule 3, 3.1 (a–h) of the Mol**;

- The interview will ensure that the candidates nominated for Chair and Vice-Chair (when relevant) will be able to drive the respective region, think strategically and contribute to the ACFE SA's board;
- The above process will ensure that the candidates are prepared to take all the responsibilities and understand the functioning of the ACFE SA;
- The interview committee will consist of the current regional Chair, President/Past President of the ACFE SA Board, and CEO of the ACFE SA
- All candidates will be vetted before being appointed and need to commit to sitting on the Board for the full term indicated in **clause 4.1.6 of the Mol**.
- The Vice-Chair of the Regional Committee will not automatically become the Chair of the Region and a Board Member of the ACFE SA. A formal Nomination process will still need to be followed and the best candidate from those who were nominated and who went through the vetting and interview process will be appointed as set out in **section 4.1.5.2 – 4.1.5.5 of the Mol**

xiv. All board members need to ensure that they understand all the obligations and requirements set out in the Mol regarding the Board Members. A copy of the Mol is available on request or can be seen on the ACFE SA Website.

#### **4. Officers and Portfolios**

All Board of directors will serve on the board for a period of 3 (three)-years and the President/Chairperson who is appointed will serve for a 3 (three)-year term and thereafter serve as Immediate Past President for a 3 (three)-year term.

**The ACFE Bylaws and ACFE SA Memorandum of Incorporation (Mol) state that the following positions are compulsory on the board of directors:**

- President/Chairperson
- Vice President/ Vice Chairperson
- Immediate Past President/Chairperson and Africa
- Board Secretary
- Treasurer/Risk

*(The Chapter may elect both a Secretary and a Treasurer at its option or combine the positions.)*

The description of the respective portfolios is described below, alternatively as per the constitution. More than one (1) Board member may be allocated per portfolio, and both the President, Vice President and Past President may take on or become involved in any of the above-mentioned Portfolios, **except for Discipline where the President may not be involved due to his/her role on Appeals.**

***What the above-mentioned board portfolios entail:***

- **President:** As well as being the President of the board, he/she is expected to act as the company's leading representative which will involve the presentation of the company's aims and policies to the outside world.

To take the President at general meetings and board meetings. With regard to the latter this will involve: the determination of the order of the agenda; ensuring that the board receives accurate, timely and clear information; keeping track of the contribution of individual directors and ensuring that they are all involved in discussions and decision-making. At all meetings, the President should direct discussions towards the emergence of a consensus view and sum up discussions so that everyone understands what has been agreed.

To take a leading role in determining the composition and structure of the board. This will involve regular reviews of the overall size of the board, the balance between executive and non-executive directors and the balance of age, experience and personality of the directors. The President is required to be a member of the Association of Certified Fraud Examiners in good standing.

**Vice President:** Designated as immediately subordinate to a chairman and serving as such in the latter's absence; a person who acts for and assists the President.

The Vice President is required to be a member of the Association of Certified Fraud Examiners in good standing.

**Immediate Past President/Chairperson and Africa:** The Past President will automatically serve on the Board as a non-executive director for a 3-year term after his term as President has



ended. The immediate Past President is required to be a member of the Association of Certified Fraud Examiners in good standing.

**Board secretary** - The Secretary shall report to the President and shall keep the minutes of the meetings of the members and of the Board of Directors (Another set of all board minutes will be kept at the ACFE SA office); see that all notices are given in accordance with the provisions of these Bylaws or as may be required by law; be custodian of the corporate records and of the seal of the Chapter and see that the seal of the Chapter is affixed to all documents as authorized, and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Board of Directors. The Secretary is required to be a member of the Association of Certified Fraud Examiners in good standing.

- **Treasurer** - The Treasurer shall report to the President and shall be responsible for all financial records maintained by the Chapter. The Treasurer will keep the Board updated on the financials of the Chapter and perform appropriate duties to see that the assets of the Chapter are properly safeguarded. The Treasurer, with assistance from the CEO, shall produce annual financial statements of the Chapter and submit them to the Board and the Corporation within three (3) months of the end of the Chapter's financial year, and in general shall perform such other duties as from time to time may be assigned by the President or by the Board of Directors. The Treasurer is required to be a member of the Association of Certified Fraud Examiners in good standing.

### **What the respective portfolios consist of:**

#### **I. Audit and Risk Committee**

In order to comply to good corporate governance the ACFE SA will have an audit committee to oversee and monitor the organisation's financial reporting, disclosure, internal and external audit, internal control, regulatory compliance, and risk management activities. This committee, consisting out of a minimum of two (2) will function under the leadership of one of the ACFE SA directors who need to be a CFE. The remainder of the committee may consist out of members and non-members to be appointed/approved by the Directors of the ACFE SA of which at least one of the committee members be a member in good standing of an accounting professional body such as SAICA, SAIPA, etc having a relevant qualification.

## **II. Training Director**

- SAQA Qualification/Accreditation
- Professional Education
- African Conference and AGM, Seminars, Workshops
- Regional Events
- Ensure auditing of training sessions and members CPE requirements.

## **III. Legal Counsel**

### General

- Constitution, Bylaws, Policies

### Discipline

- Disciplinary matters - Will be assisted by the ACFE SA legal officer and qualified independent party/ies
- Chair Board of Review (see below)

**Previous Board meetings have identified a need for the following positions or committees/forums:**

### **I. ACFE SA Award Committee**

- Scholarships
- Awards

### **II. Communication Committee**

- Website
- newsletters
- marketing material
- branding
- PRO

### **III. IT Security**

**Subcommittees under the respective portfolios**

#### **I. Audit and Risk Committee**

- Remuneration Committee
- Finance Committee

#### **II. Training Committee**

- ACFE Africa
- Conference

- New qualifications
- Auditing of providers, training sessions, and CPE

### III. **Legal & Disciplinary Committee**

- Disciplinary
- ACFE SA Risk - Identifying company risks and assisting General Counsel in drafting the necessary policies and procedures.

### IV. **Regional Committee** - Will consist of the respective regional chairs

### V. **AFRICA** – Member development and training

## **Meetings**

The Board of Directors shall meet at least three times per year at times and places they may choose. At such meetings, a quorum of 51% needs to be present. The meetings shall be conducted under the rules contained in Robert’s Rules of Order unless those rules are in conflict with the bylaws, in which case the bylaws shall take precedence.

In all meetings of the Board, the President shall preside. In his/her absence, the Vice President, the Secretary, or the Treasurer, in that order, shall preside.

Appropriate notice of the meetings of the Board shall be furnished to each Member of the Board at least ten (10) days in advance. A special meeting may be called by the President, or by any three (3) Board Members under the provisions of the bylaws.

## **Protocol for Board members:**

- Attendance is expected at all Chapter / Regional meetings in your area. Board members are required to attend at least fifty (50%) percent of all Regional meetings. Any officer who has failed to attend the required number of meetings may be removed by a majority vote of the Board of Directors.
- Attendance at Board meetings and “National” Events (Imbizo and Annual AGM etc) are mandatory. Board members need to attend a minimum of 75% of the board meetings and Exco members a minimum of 75% of Exco meetings.

- Dial-ins regarding the respective Board and Exco meetings will be limited to 25% of all board and Exco meetings that are required to be attended. When a Board member dial in the sufficiency of the respective meeting is not that successful than that of the board member/s attending the respective meetings.
- A written report detailing all progress, difficulties and developments, expenses in your portfolio has to be submitted 1 week prior to a board meeting;
- A budget detailing all funds required shall be submitted by the portfolio Directors before the end of June each year enabling the CEO to include same in his Budget if viable;
- No media/press releases will be sent out to anyone, without the prior confirmation of the Board/CEO;
- All Administration, Membership including registration and membership fees, sundry payments, Newsletters and all communication with members and Meeting/Event arrangements – including invitations and rsvp's/ bookings, will be handled by the respective employees directly from the ACFE SA office.
- The respective Board members can share their ideas and initiatives with the ACFE SA, but all policy decision, marketing, projects (other than event management), training directives, finance and budget are handled and the final decision made by the CEO.

## **THE DESIGNATED CHAPTER TRAINING DIRECTOR**

The qualifications for the Designated Chapter Training Director (CTD) are:

- A Certified Fraud Examiner and ACFE SA member in good standing;
- The CTD should be a past Chapter Officer or Director and be able to perform the duties of the Designated Chapter Training Director for a minimum of 2 years.
- He/she needs to have experience in public speaking.
- The responsibilities of the Designated Chapter Training Director are:
  - Know the necessary elements to effectively train all CFE's and candidates for the Uniform CFE Examination.
  - The CTD will be familiar with all training issues in the chapter.
  - Will assist in finalizing the final ACFE Conference program, to ensure the most appropriate speaker/s are chosen for the specific conference
  - Be familiar with the contents of the *Fraud Examiners Manual* in order to prepare course material for training from particular sections.
  - **The Designated Chapter Training Director shall have the following authority:**

- To coordinate with the Chapter Officers and Directors the training programs for the chapter.
- To enter into agreements, with the approval of the chapter's Board of Directors and CEO, pertaining to holding joint venture training with other professional bodies with whom the ACFE SA has an MoU.

## **CHAPTER LEGAL AND FINANCIAL ISSUES**

### **RECORDKEEPING**

Local chapters of the ACFE are required to maintain records of all aspects of chapter business. The Secretary shall be responsible for all records, other than financial, maintained by the local chapter. The Treasurer shall be responsible for all financial records maintained by the local chapter. All records maintained by the local chapters shall be made available to the Association or its representative upon reasonable request.

As an internal control structure, all disbursements must be properly approved. As an oversight measure, the Board member of the local chapter must be kept advised of the status of the accounting of funds and otherwise perform appropriate duties to see that the assets of the chapter are properly safeguarded.

The Finance Officer together with the CEO shall prepare an annual budget for the chapter which need to be submitted to the Treasurer/Audit Committee for scrutiny. The budget should be discussed at the beginning of each financial year with the Board of Directors. Prohibited disbursements from chapter accounts include:

- \_ Political contributions
- \_ Criminal or civil defence funds
- \_ Payments to sources and informants
- \_ Payments or other compensation for chapter members other than reimbursements for chapter expenses.

### **TAX RETURNS**

As described in Section II, it is the responsibility of chapter officers and directors to contact the applicable taxing authority concerning the filing of tax returns and applying for tax-exempt status.

### **The ACFE SA IS EXEMPTED FROM TAX**

## **LEGAL COUNSEL**

### **Board of Review**

The Board of Review is the independent appraisal committee established by the Board of Directors establish and maintain standards of conduct and to maintain canons of ethics for the integrity and reputation of the professional certification – Certified Fraud Examiner (CFE). The purposes of the Board of Review are to:

- Establish uniform standards for handling members alleged to have violated the CFE Code of Professional Ethics, and to review and modify the standards as necessary.
- Develop procedures to investigate complaints submitted to the Board of Review.
- Investigate complaints submitted to the Board of Review.
- Make recommendations to the Board of Regents for disciplining CFEs who are considered to be in violation of the Code of Professional Ethics.
- Interact with the Professional Standards and Practices Board in issues of common interest.

## **COMMUNICATIONS, MARKETING AND PRO**

- Communicate to the ACFE the names of chapter members nominated for special awards and the names of any recipients of any other awards or certificates.
- Maintain the chapter historical files and photos

## **OTHER IDEAS OF COMMITTEES PER THE ACFE INTERNATIONAL:**

### **Commerce Committee**

- \_ Identify key fraud areas of special concern for commercial entities.
- \_ Design and implement a survey instrument to determine common fraud schemes specific to commercial environments.
- \_ Draft an inventory of detection methods and controls to prevent fraud.
- \_ Formulate a series of specialized training initiatives for CFEs and make recommendations to the Professional Liaison Committee on marketing the CFE program in the commercial field.

### **Computer Fraud Committee**

- \_ Determine the needs of Certified Fraud Examiners in understanding computer fraud and other areas of computer-related crimes, which include:
  - Computer fraud and computer-related crime schemes.
  - Elements of computer fraud and computer-related crimes.

- Skills needed to investigate computer fraud and computer-related crimes.
- Tools and techniques available to investigate computer fraud and computer-related crimes.
- Training needed to investigate computer fraud and computer-related crimes.
- Detection techniques.

### **Financial Institution Fraud Committee**

- \_ Provide the ACFE with an effective means of communicating with financial institutions.
- \_ Identify areas of special concern for financial institutions
- \_ Make recommendations for promoting the CFE program in financial institutions.
- \_ Act as a resource for ACFE members of financial institutions by providing a network of information sharing and informal consulting on matters affecting the industry.

### **Governmental Fraud Committee**

- \_ Promote improved fraud detection and deterrence in the government sector.
- \_ Represent the interests of Certified Fraud Examiners employed by federal, state, and local governments.
- \_ Develop surveys to compile a professional profile of CFE's in government.
- \_ Propose training to the ACFE which meets the needs of CFE's in government.

### **Health Care Fraud Committee**

- \_ Collect and disseminate information regarding fraud in health care.
- \_ Develop ideas on how to prevent and detect fraud in health care.
- \_ Provide speakers for conferences and local chapter meetings on the subject of health care fraud.
- \_ Encourage professionals at health care institutions to become Certified Fraud Examiners and to become active in the ACFE and local chapters.

### **Insurance Fraud Committee**

- \_ Provide the Board of Director's guidance for insurance industry training needs to deter, detect, investigate, report the fraud to management, and, if necessary, law enforcement agencies for possible prosecution.
- \_ Create a communication network among CFE members on new fraud detection methodologies to minimize and control fraud in the insurance industry

\_ Develop a database for storing vital statistics regarding CFE insurance members and information on how effectively each company is preventing, detecting, investigating, and reporting fraud, etc.

### **International Fraud Committee**

\_ Promote ACFE membership, certification, and education programs in international business markets.

\_ Assist the ACFE grasp peculiarities of custom, law, and language in markets it chooses to enter.

\_ Encourage effective outreach programs with international fraud investigators and the law enforcement community.

\_ Facilitate exchanges of international fraud detection and deterrence ideas.

\_ Keep the ACFE on the forefront of research and development regarding international investigative tools and containment strategies.

### **Professional Liaison Committee**

\_ Identify professional and industrial organizations for which the ACFE can provide significant services and secure an active interface with these organizations.

\_ Inform such organizations about the availability and character of ACFE programs designed for or adaptable to their use, facilitate the presentation of these programs, and provide such service as requested.

\_ Initiate and maintain a working relationship with professional and industrial organizations with which the ACFE shares significant common objectives and provide reasonable assurance that such inter-organizational cooperation achieves the maximum cost-effective mutual benefit.

### **Research Committee**

\_ Identify key areas needing research and the development of objectives relating to such research.

\_ Determine current and up-to-date sources available for research information relating to fraud detection and deterrence, with a view to distribution of the information to the ACFE membership.

\_ Utilizing ACFE resources disseminate research results to Certified Fraud Examiners, allied professions, and other parties of interest.