

Companies and Intellectual Property Commission

Republic of South Africa

Memorandum of Incorporation

Of

**ASSOCIATION OF CERTIFIED FRAUD EXAMINERS SOUTH AFRICA CHAPTER
NPC**

Registration Number: 1999/014890/08

Hereafter referred to in the rest of this Memorandum of Incorporation as “the Company”.

The Company is a Non Profit company with members, with the following objects:

1. to promote and protect the interests of the Association and its members, to encourage co-operation and to deal with all such matters as may affect their common interests in respect of fraud examination;
2. to promote, support or oppose as may be deemed expedient, legislative or other measures affecting the interests of the Association or its members;
3. to confer with the Government, Provincial Administration or local authorities and their departments and all other interested bodies of concern, or likely to be of concern to the Association;
4. to be affiliated to any Association or organisation as may be decided upon by the Association from time to time;
5. to collect and disseminate information likely to be of use to the Association’s members;
6. to provide training and education in respect of fraud examination and investigation;
7. to promote a high standard of quality, design and workmanship in the fraud examination profession, and to provide for the certification of fraud examiners;
8. to promote the fraud examination profession, by advertisement, publicity campaigns, exhibitions, or otherwise;
9. to acquire, either by purchase, lease or otherwise, and to sell, let, mortgage or otherwise deal with or dispose of any movable or immovable property;

10. to establish, maintain or assist in the establishment or maintenance of any fund or committee formed or which may be formed for the protection of the interests of the Association or its members, or for the protection and benefit of employees, or for the benefit and protection of the joint interests of employers and employees in the fraud examination profession, provided that no fund which is not subject to control under South African law will be established until the rules governing such fund have been approved by the Registrar of Companies;
11. to provide legal assistance to members where deemed necessary;
12. to be a local chapter for the Southern African region of the mother organisation, the Association of Certified Fraud Examiners, based in Texas, USA, and to abide by its code of ethics; and
13. to do all other lawful things as may appear to be in the interests of the Association and its members.

Amendment of Memorandum of Incorporation

The Company is a pre-existing company, incorporated in terms of the Companies Act, 1973. As contemplated in Section 16(1) (C) of the Companies Act, 2008, the Company wishes to amend its existing Memorandum of Incorporation by replacing it with this Memorandum of Incorporation, which was adopted by the members of the company by the passing of a special resolution dated 25 October 2016 as is evidenced by the Minutes of the Meeting enclosed herewith as Annexure "A".

In this Memorandum of Incorporation—

- (a) a reference to a Section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
- (c) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.

The Schedules attached to this Memorandum are part of the Memorandum of Incorporation.

Article 1 – Incorporation and Nature of the Company

1.1 Incorporation

- 1.1.1 The Company is incorporated as a Non Profit company, as defined in the Companies Act, 2008.
- 1.1.2 The Company is incorporated in accordance with, and governed by –
 - a) the unalterable provisions of the Companies Act, 2008 which are applicable to Non Profit companies;
 - b) the alterable provisions of the Companies Act, 2008 which are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
 - c) the provisions of this Memorandum of Incorporation.

1.2 Objects and Powers of the Company

- 1.2.1 The Objects of the Company are as set out on the cover sheet. Except to the necessarily implied by the stated objects, the purposes and powers of the Company are subject to any restriction, limitation or qualification, contemplated in Section 19 (1) (b) (ii), as set out in Part A of Schedule 1.
- 1.2.2 The Company is subject to the provision contemplated in Section 15 (2) (b) or (c), as set out in Part B of Schedule 1.
- 1.2.3 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with the provisions, if any, set out in Part C of Schedule 1 of this Memorandum.

1.3 Memorandum of Incorporation and Company rules

- 1.3.1 This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in Section 16, 17 or 152 (6) (b)
- 1.3.2 The authority of the Company's Board of Directors to make rules for the Company, as contemplated in Section 15 (3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation
- 1.3.3 The Board must publish any rules made in terms of Section 15 (3) to (5) by delivering a copy of those rules to each member by ordinary mail or electronic mail (email).
- 1.3.4 The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of Section 17 (1) by delivering a copy of those rules to each director and member by ordinary mail or electronic mail (email).

1.4 Optional provisions of Companies Act, 2008 do not apply

- 1.4.1 The Company does not elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008.

1.5 Members of the Company

- 1.5.1 As contemplated in Item 4 (1) of Schedule 1 of the Act, the Company has members, who are in either of two classes, being voting and non-voting members, respectively.
- 1.5.2 The terms and conditions of membership in the Company are as set out in Part D of Schedule 1 to this Memorandum.

Article 2 – Rights of Members

2.1 Members' authority to act

- 2.1.1 If, at any time, every member of the Company is also a director of the Company, as contemplated in Section 57 (4), the authority of the members to act without notice or

compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

2.2 Members' right to information

2.2.1 In addition to the right to access information set out in Section 26 (1), a member of the Company also has the further right to information, if any, set out in Part A of Schedule 2 of this Memorandum of Incorporation.

2.3 Representation by concurrent proxies

2.3.1 The right of a member of the Company to appoint persons concurrently as proxies, as set out in Section 58 (3) (a) is limited, restricted or varied to the extent set out in Part B of Schedule 2.

2.4 Authority of proxy to delegate

2.4.1 The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58 (3) (b) is limited or restricted to the extent set out in Part B of Schedule 2.

2.5 Requirement to deliver proxy instrument to the Company

2.5.1 The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's right at a members meeting, as set out in section 58 (3) (c) is varied to the extent set out in Part B of Schedule 2.

2.6 Deliberative authority of proxy

2.6.1 The authority of a member's proxy to decide without direction from the member whether to exercise, or abstain from exercising any voting right of the member, as set out in Section 58 (7) is limited or restricted to the extent set out in Part B of Schedule 2.

2.7 Record date for exercise of members' rights

2.7.1 If, at any time the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59 (3).

Article 3 – Members Meetings

3.1 Requirement to hold meetings

3.1.1 The Company is not required to hold any members' meetings, other than those specifically required by the Companies Act, 2008.

3.2 Members' right to requisition a meeting

3.2.1 The right of members to requisition a meeting, as set out in Section 61 (3), may be exercised by at least 10% of the voting members, as provided for in that section.

3.3 Location of members' meetings

3.3.1 The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in Section 61 (9) is not limited or restricted by this Memorandum of Incorporation.

3.4 Notice of members' meetings

3.4.1 The minimum number of days for the Company to deliver a notice of a members meeting to the members is as required by Section 62.

3.5 Electronic participation in members' meetings

3.5.1 The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 63 is not limited or restricted by this Memorandum of Incorporation.

3.6 Quorum for members' meetings

3.6.1 The quorum requirement for a members meeting to begin, or for a matter to be considered are as set out in Section 64 (1) subject to a minimum of 10% in substitution for the 25% required by that section or 30 people whichever is the lowest, provided that there will never be less than 3 members with CFE voting rights present in person.

3.6.2 The time period allowed in Section 64 (4) and (5) apply to the Company without variation.

3.6.3 The authority of a meeting to continue to consider a matter, as set out in Section 64 (9) is not limited or restricted by this Memorandum of Incorporation.

3.7 Adjournment of members' meetings

3.7.1 The maximum period allowable for and adjournment of a members meeting is as set out in Section 64 (13), without variation.

3.8 Members resolutions

3.8.1 For an ordinary resolution to be adopted at a members meeting, it must be supported by more than 50% of the members who voted on the resolution, as provided in Section 65 (7).

3.8.2 For a special resolution to be adopted at a members meeting, it must be supported by more than 60% of the members who voted on the resolution, despite Section 65 (7).

3.8.3 A special resolution adopted at a members meeting is not required for a matter to be determined by the Company, except those matters set out in Section 65 (11).

Article 4 – Directors and Officers

4.1 Composition of Board of Directors

4.1.1 The Board of Directors of the Company will comprise at least 4 elected directors, no more than 15 elected non-executive directors, and no alternate directors each of whom is to be elected -

- a) in the manner set out in Part A of Schedule 3; and
- b) serves for a term as set out in Article 4.1.4 and 4.1.5 below.

4.1.2 The elected directors will at the first Board meeting following their election, elect from their own number the directors responsible for the following portfolios:

4.1.2.1 The Chairperson of the Board of Directors

4.1.2.2 The Treasurer

- 4.1.2.3 The Training director
 - 4.1.2.4 The General Legal Counsel, and
 - 4.1.2.5 Any other portfolios deemed appropriate by the Board of Directors.
- 4.1.3 In addition to the elected directors, there will be 06 automatically co-opted *ex officio* directors of the Company, as contemplated in Section 66 (4). The *ex officio* directors will be the Chairpersons of the respective Regional Interest Groups, being:
- 4.1.3.1 Eastern Cape
 - 4.1.3.2 Free State
 - 4.1.3.3 Johannesburg
 - 4.1.3.4 Kwazulu-Natal
 - 4.1.3.5 Pretoria, and
 - 4.1.3.6 Western Cape.
- 4.1.4 In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a director of the Company, a person must satisfy the additional requirements and qualifications set out in Part B of Schedule 3.
- 4.1.5 Each appointed director of the company will serve for a 3-year term, where after they will qualify to be re-elected at a members meeting. Similarly, the Past President will automatically serve on the Board as a non-executive director for a 3-year term.
- 4.1.6 Non-Executive directors of the Company will serve for a 3-year term, where after they will qualify for re-election at a members meeting. The CEO and any executive directors to be appointed will not fall into this category.
- 4.1.7 Any elected non-executive Board member may only serve a maximum of 6 consecutive years as Board member, where after he/she will observe a 2-year cooling-down period.
- 4.1.8 Over and above the fact that the periods of tenure listed in clauses 4.1.4 to 4.1.7 also applies to the *ex officio* directors referred to in clause 4.1.3 above, the *ex officio* directors' eligibility to serve as Board members is dependent on them holding the qualifying position, being regional Chairperson. Should an *ex officio* director vacate the position of regional Chairperson for any reason whatsoever, he/she will automatically be disqualified from serving on the Board as from the date of vacating such position.

4.2 Authority of the Board of Directors

- 4.2.1 The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company as set out in section 66 (1) is not limited or restricted by this Memorandum of Incorporation.

4.3 Board of Directors meetings

- 4.3.1 The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in Section 74 is not limited or restricted by this Memorandum of Incorporation.

- 4.3.2 The right of the Company's Directors to requisition a meeting of the Board, as set out in Section 73 (1), may be exercised by at least 25% of the directors, as provided in that section.
- 4.3.3 The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 73 (3) is not limited or restricted by this Memorandum of Incorporation.
- 4.3.4 The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in Section 73 (4) is not limited or restricted by this Memorandum of Incorporation.
- 4.3.5 The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in Section 73 (5) is not limited or restricted by this Memorandum of Incorporation.
- 4.3.6 The quorum requirement for a directors meeting to begin, the voting rights at such a meeting and the requirements for approval of a resolution at such a meeting, are as set out in Section 73 (5).

4.4 Indemnification of Directors

- 4.4.1 The authority of the Company's Board of Directors to advance expenses to a director, or indemnify a director, in respect of defence of legal proceedings, as set out in Section 78 (3) is not limited or restricted by this Memorandum of Incorporation.
- 4.4.2 The authority of the Company's Board of Directors to indemnify a director in respect of liability, as set out in Section 78 (5) is not limited or restricted by this Memorandum of Incorporation.
- 4.4.3 The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a director, as set out in section 78 (6) is not limited or restricted by this Memorandum of Incorporation.

4.5 Officers and Committees

- 4.5.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- 4.5.2 The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board as set out in Section 72 (1), or to include in any such committee persons who are not directors, as set out in Section 72 (2) (a), (b), and (c) is not limited or restricted by this Memorandum of Incorporation.
- 4.5.3 The authority of a committee appointed by the Company's Board, as set out in Section 72 (2) (b) and (c) is not limited or restricted by this Memorandum of Incorporation.

Schedule 1 – Incorporation and nature of the Company

Part A

1. Included in the powers of the company, and subject to the Companies Act, 2008 and this Memorandum of Incorporation and the special conditions as set out in paragraph 2 below, are the following powers:

- a) To form and to have an interest in any companies, with objects similar to those of the company or to acquire all or any of the assets or liabilities of such company or companies, and to transfer to any company or companies all or any assets or liabilities of this company; provided that the said company or companies is/are within the Republic of South Africa and themselves must be approved by SARS in terms of section 30B of the Income Tax Act for the purposes of section 10(1)(d)(iv) of such Act.
 - b) To amalgamate with other companies having objects similar to those of this company; providing that the said company or companies is/are within the Republic of South Africa and themselves are approved by SARS in terms of section 30B of the Income Tax Act for the purposes of section 10(1)(d)(iv) of such Act.
 - c) To take part in management, supervision and control of business or operations of any other company or business having objects similar to those of this company and is approved by SARS in terms of section 30B of the Income Tax Act for the purposes of section 10(1)(d)(iv) of such Act.
 - d) To remunerate any person or persons in cash for services in its formation or in the development of the business.
 - e) To make donations to any other company or institution having the same or similar objectives provided that such company or institution is exempt from income tax in terms of section 10(1)(d)(iv) or 10(1)(cN) or section 10(1)(cA)(i) of the Income Tax Act.
 - f) To act as principal, agent, contractors or trustees in accordance with the main objects of the Company.
 - g) The Company will not be entitled to distribute in specie or in kind any assets among its members.
2. To the extent that the company has been approved in terms of section 30B of the Income Tax Act, for the purposes of section 10(1)(d)(iv) of the Income Tax Act, the following special conditions will apply:
- a) At least three of the directors will be not be connected persons in relation to each other.
 - b) No single person will have direct or indirect control of the decision-making powers relating to the company.
 - c) The company will not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives.
 - d) The company will utilise, substantially, the whole of its funds for the sole or principal object for which it has been established.
 - e) No member may directly or indirectly have any personal or private interest in the company.
 - f) Substantially, the whole of the activities of the company will be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group.
 - g) The company will not have a share or other interest in any business, profession or occupation which is carried on by the members.
 - h) The company will not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.

- i) The company's funding will be derived from its member fees, annual conference, training events, and member services provided in other countries.
- j) The company will on dissolution transfer its assets to —
 - (aa) another entity approved by the Commissioner in terms of this section.
 - (bb) a public benefit organisation approved in terms of section 30.
 - (cc) an institution, board or body which is exempt from tax under section 10 (1) (cA) (i).
 - (dd) the government of the Republic in the national, provincial or local sphere.
- k) The directors must submit any amendment of the Memorandum of Incorporation to the Commissioner within 30 days of its amendment.
- l) The directors will ensure that the company complies with such reporting requirements as may be determined by the Commissioner for SARS from time to time.
- m) The company will not knowingly become a party to, and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103 (5) of the Income Tax Act.

Part B

1. The company will collect contributions in the Republic of South Africa as well as outside the borders of the Republic of South Africa.
2. The company will render its services in the Republic of South Africa, but also provide advisory services to other Chapters of the ACFE in Africa.
3. Amendments to the Memorandum and Articles of Association will be made according to the procedure and in accordance with the provisions of the Companies Act, 1973.
4. No members and/or director will use the company to gain personal benefit in any contract concluded with third parties.
5. The income and property of the company will be applied solely towards the promotion of its main objects and no portion thereof will be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise, to the members of the company or to its holding company or subsidiary: Provided that nothing herein contained will prevent the company in good faith from reasonably remunerating to any officer or servant of the company or any member thereof in return of any service actually rendered to the company.

Part C

Upon its winding-up, deregistration or dissolution, the assets of the company remaining, after satisfying its liabilities, will be given or transferred to some other charitable, ecclesiastical or educational association or institution having objectives similar to its main objectives, to be determined by the members of the Company at or before the time of dissolution or, failing such determination by the Court; provided that such other association or institution is within the Republic of South Africa and themselves exempt in terms of section 10(1)(d)(iv), or has been approved by SARS as a public benefit organisation as contemplated in section 30 of the Income Tax Act, or is exempt from income tax in terms of section 10(1)(cA)(i) of the Income Tax Act.

Part D

1. Any person who is employed as or practices as a fraud examiner or practices in a similar profession and makes a written application to become a member of the company and who subscribes to the objects of the company, can be a member of the company.
2. All applicants are subject to the approval by the Company and the Companies Board of Directors. An applicant may not be admitted if he or she has been expelled from the Association or from any other local chapter. All applicants must complete and submit a written application, pay applicable membership fees and agree to those Articles and the operational guidelines established by the company.
3. A member will *ipso facto* cease to be a member of the company:
 - 3.1 if his/her estate is finally sequestrated;
 - 3.2 if he/she is placed under curatorship;
 - 3.3 if he/she is removed as a director by majority of the members;
 - 3.4 if he/she is removed as a member by the Directors.
4. If a member resigns by notice in writing to the company, he/she resigns as a member but such resignation will not become effective until accepted by the company, and will not relieve the resigning individual from the payment of dues for the expired portion of the current financial year, or give any right to rebate for dues paid, or any right to prorated share or any other of the assets of the Chapter. All resignations must be in writing.
5. A person/persons will cease to be a member of the company if he/she dies.
6. The membership of the company will consist of:
 - 6.1 *Foundation members*: The first members of the company will be the founding members;
 - 6.2 *CFE members*: Persons who being full members of the Association, having agreed to be bound by the terms of the Memorandum and Articles of Association of the company and having been admitted to membership, pay an annual contribution of such amount as the Board of Directors may determine from time to time;
 - 6.3 *Associate members*: Persons who being associate members of the Association having agreed to be bound by the terms of the Memorandum and Articles of Association to the company and having been admitted to membership, pay an annual contribution of such an amount as the Board of Directors may determine from time to time;
 - 6.4 *Affiliate members*: Persons who are not members of the Association, but having agreed to be bound by the terms of the Memorandum and Articles of Association of the company and having been admitted to membership, pay an annual contribution of such an amount as the Board of Directors may determine from time to time;
 - 6.5 *Student members*: Registered, full time students, who has agreed to be bound by the terms of the Memorandum and Articles of Association of the company and having been admitted to membership,

pay an annual contribution of such an amount as the Board of Directors may determine from time to time;

- 6.6 *Honorary members*: Persons who, in recognition of exceptional and distinguished services rendered to the company are elected honorary members by the Board of Directors.
7. All membership subscriptions will become due and payable in advance on the first day of August in each year. Failure to renew subscription within sixty (60) days from due date will terminate membership.
8. A member may be fined, suspended, or expelled from the Company by the Directors for being in arrears with subscriptions for more than 60 days, failing to uphold the Code of Ethics and Professional Standards of a Certified Fraud Examiner, acting against the interests of the company or its members or any other reason which in the opinion of the Directors may be reasonable under the circumstances.
9. A member fined by, suspended or expelled from the Association will, by written notice delivered to the Directors not more than 7 (seven) days after the date of fining, suspending or expelling, be entitled to appeal to a General Meeting of members of the Company, which the Directors will on receipt of the notice forthwith convene.

PART E

1. Voting rights:
 - 1.1 CFE members will have 10 votes.
 - 1.2 Associate members will have 8 votes.
 - 1.3 Affiliate members will have 1 vote.
 - 1.4 Honorary members will have 10 votes.

Schedule 2 - Rights of Members

Part A

Not applicable

Part B

1. A member of the company may only appoint one person as proxy.
2. A proxy may not delegate the proxy's authority to act on behalf of the member to another person.
3. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarial certified copy of such power or authority will be deposited at the registered office of the company not less than twenty-four (24) hours (or such lesser period as the directors may unanimously determine in relation to any particular meeting) before the time for holding the meeting (including an adjourned meeting) at which the person named in the form proposes to vote, and in default the form of proxy will not be treated as valid

4. A proxy is not entitled to exercise, or abstain from exercising, any voting right of the member without direction.
5. The proxy form submitted in terms of Part C of Schedule 2 (c) will be deemed to be the actual vote of the member.

Schedule 3 – Directors of the Company

Part A

1. The company may from time to time, at any meeting of members, increase or reduce the number of directors
2. Unless otherwise decided by a meeting of members any casual vacancy occurring in the Board of Directors may be filled by the directors.
3. The directors at a meeting of members will have the power to appoint any person as a director ensuring that the total number of directors will not at any time exceed the maximum number fixed by or in terms of these Articles should there be a need to do so.

Part B

1. Directors must be CFE members or Associate members who meet the following requirements:
 - 1.1. 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
 - 1.2. 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.

The ACFE SA will use the criteria set by the ACFE in determining what will constitute as “relevant experience”.

2. Executive directors must be a CFE member in good standing with both the local and the international chapter.
3. A director will cease to hold office as such if:
 - 3.1 He/she ceases to be a director by virtue of any of the provisions of the Statutes or becomes prohibited from being a director by reason of any order made under the Statutes; or
 - a) his/her estate is sequestrated or files an application for the surrender of his/her estate, makes an application for an administration order, or if he/she is declared insolvent as defined in the insolvency law for the time being in force, or if he/she makes any arrangement or composition with his creditors generally; or
 - b) he/she is found or declared to be of unsound mind; or
 - c) he/she is removed by a resolution of the company as provided in the Statutes; or
 - d) he/she resigns from office by notice in writing to the company; or

- e) a notice removing him/her from office is signed by members having a right to attend and vote at a meeting of members who hold not less than seventy-five percent (75%) of the total voting rights of all the members, and such notice is delivered to the company or lodged at its registered office; or
 - f) he/she no longer qualifies for CFE or Associate membership
 - g) he/she is otherwise removed in accordance with any provisions of these Articles.
- 3.2 No director or intending director will be disqualified by his own office from contracting with the company in any manner whatsoever.
- 3.3 A director who has a vested interest in any transaction or decision will not be entitled to vote in relation thereto at any meeting. Such a director will not be reckoned for the purpose of constituting a quorum of directors.