

BY-LAWS OF THE INSTITUTE OF LOSS ADJUSTERS OF SOUTHERN AFRICA
IN TERMS OF ARTICLE 4.8 OF THE CONSTITUTION

(Amended as at April 2011)

1. APPLICATION FOR MEMBERSHIP AND/OR ELEVATION

- 1.1 An applicant for membership, in a format prescribed by the National Committee, shall pay a fee that is partially refundable if the application is unsuccessful.
- 1.2 The Executive Committee shall, on receipt of a member's application, in a format prescribed by the National Committee, for elevation to a category of membership, grant such application if the applicant meets the requirements. If the applicant is a member of the committee, he may not be present during discussion of or decision relating to the application and shall have no vote.

2. MEMBERSHIP QUALIFICATIONS

An applicant for membership or elevation shall meet with the following requirements:

2.1 ACCREDITED MEMBERSHIP

2.1.1 A person will be admitted as an Accredited Member if he

2.1.1.1 is not less than 18 years of age; and

2.1.1.2 holds a Grade 12 (school leaving) or NTC 3 or equivalent qualification; and

2.1.1.3 has been employed or mentored for at least 1 full calendar year by a firm of loss adjusters where at least 1 principal is a Fellow or Associate of the Institute

OR

has been habitually engaged as an in-house non-motor assessor in the short term insurance industry for a period of not less than 3 full calendar years

OR

has been actively employed in the short term insurance industry as a non motor claims handler for a period of not less than 5 full calendar years

OR

has been actively employed in the short term insurance industry for a period of not less than 10 full calendar years; and

2.1.1.4 A person so admitted as an Accredited Member shall only retain such membership if, within a period of not more than 5 full calendar years of being admitted as an Accredited Member in terms of these By-Laws, achieves the qualification requirements as determined by the National Committee from time to time and ratified by the voting members of the Institute and presently being:-

a minimum of 120 appropriate credits at NQF level 4 or above as registered by SAQA and quality assured by any Insurance authority appointed by SAQA as a quality assurer

OR

An appropriate NQF level 4 qualification or equivalent qualification approved by the National Committee; and

2.1.1.5 is a fit and proper person.

2.1.1.6 Existing members who do not comply with By-Law 2.1.1.4 must, within 5 years of having Accredited Membership conferred, comply with these minimum requirements, failing which, their membership shall be terminated.

2.1.2 Failure to comply with the requirement in terms of point 2.1.1.4 above shall result in termination of membership.

2.2 ASSOCIATE MEMBERSHIP

2.2.1 A person will be elevated to Associate Member if he:

2.2.1.1 is not less than 25 years of age; and

2.2.1.2 has achieved the Associateship Qualification as determined by the Institute and presently being:-

A Certificate, Diploma or Academic Degree appropriate to his field of operation as a loss adjuster at NQF level 5 or above;

OR

A minimum of 120 credits at NQF level 5 or above as registered by SAQA and quality assured by any Insurance authority appointed by SAQA as a quality assurer.

OR

An appropriate NQF level 5 qualification or equivalent qualification approved by the National Committee.

OR

The National Certificate: Loss Adjusting; and

2.2.1.3 has practiced as an Accredited Member for a period of not less than 3 full calendar years; and

2.2.1.4 is a fit and proper person.

2.3 FELLOW MEMBERSHIP

2.3.1 A person will be elevated to Fellow Member if he:

2.3.1.1 is not less than 30 years of age; and

2.3.1.2 has met or attained the current Associateship member's qualifications as set out in point 2.2.1.2 of the Associate Membership requirements; and

- 2.3.1.3 has practiced as an Accredited and Associate member for a combined period of not less than 10 full calendar years; and
- 2.3.1.4 presents himself to a panel of not less than 3 Fellows of the Institute appointed by the Executive Committee and demonstrates that he has sufficient expertise, experience, knowledge and skill to be recommended to Fellowship by the appointed panel; and
- 2.3.1.5 publishes a paper or other appropriate publication or document, the subject matter of which shall be approved by the Executive Committee, on a specific subject related to insurance that will be of benefit to loss adjusters or the short term insurance industry and which shall be presented to a panel of not less than 3 Fellows of the Institute appointed by the Executive Committee for adjudication; and
- 2.3.1.6 is a fit and proper person

2.4 RETENTION OF MEMBERSHIP

- 2.4.1 To retain membership, members shall by March each year obtain the required number of points collated over the immediate prior 12 month period and as determined by the Institute, by completing CPD (continuing professional development) as set out in the Guide issued by the Institute from time to time.
- 2.4.2 To retain their membership, members shall complete and return any requisite renewal and other documents as may be required by the Institute within the relevant time limits.

2.5 EXTRA TERRITORIAL MEMBERSHIP

Notwithstanding the territorial jurisdiction of the Institute and the requirements of the Profession, a Loss Adjuster is entitled to retain membership as an Extra Territorial member if the member leaves the Territory to practice as a Loss Adjuster in another country, provided that the member is a paid up member at the time of leaving the Territory, and

- 2.5.1 the new country in which the member intends practicing as a Loss Adjuster does not have local institute of loss adjusters; or
- 2.5.2 if, after leaving the Territory, the member practices in a country which does have a local Institute, the member may only retain the Extra Territorial membership for a prescribed period (to be agreed with the Executive Committee) within which period the member is required to comply with the membership requirements of the new territory's local institute, after which prescribed period the Extra Territorial membership with the Institute of Loss Adjusters of Southern Africa terminates

The member may use any Distinguishing Letters behind his name that he was entitled to use when practicing in the Territory while he is categorized as an Extra Territorial member. However, when the Extra Territorial membership terminates he must cease to use the Distinguishing Letters.

3. REINSTATEMENT OF FORMER MEMBERS

A former member shall be exempted from the requirements of by-law 2 and shall, upon his application, be admitted to the membership category he held when his membership was terminated, or the category that replaced such category, provided he:

- 3.1 Has not spent more than 5 years since termination of membership outside the practice of Loss adjusting; and
- 3.2 Complies with Article 11 of the Constitution; and
- 3.3 Has not previously been expelled from the Institute.

4. DISTINGUISHING LETTERS

Fellows and Associates may use the following distinguishing letters:

- Fellow - FILA
- Associate - AILA

5. DISCIPLINARY ENQUIRY

- 5.1 The Institute shall have disciplinary jurisdiction and power over its members, no matter where the alleged conduct is or was committed.
- 5.2 Notwithstanding the provisions of article 12 of the Constitution, if a member's conduct is under investigation or the subject of a hearing or an appeal, a member's resignation will have no force or effect and membership will not otherwise terminate, unless the Executive Committee accepts the resignation or the investigation, hearing and appeal, if any, has been concluded.
- 5.3 The Executive Committee shall inquire into and consider any information to determine whether a member is guilty of unprofessional conduct or is not a fit and proper person to practice as a Loss Adjuster or is in contravention of the Constitution or the By-Laws.
- 5.4 The Executive Committee shall notify the member, providing him with particulars, and call upon him to, in writing and within such time as it may direct and/or appear at such time, date and place as it may determine, provide it with information and an explanation of the matter.
- 5.5 The member shall comply and furnish a full explanation and make a full disclosure of all relevant information which will include access to his files and records. Any admission by the member or information that he provides may be used as evidence at any hearing.

- 5.6 The Executive Committee may call on any member to furnish information regarding another member's conduct and such member shall comply and make a full disclosure within a period of 30 (thirty) days of receiving such a request to furnish information.
- 5.7 If the Executive Committee is of the opinion that the member's conduct does not constitute unprofessional conduct or that he is a fit and proper person to practice as a Loss Adjuster or that there is no reasonable prospect of proving that he is/was guilty of unprofessional conduct, the Executive Committee may decide not to proceed with the matter and shall advise the member and the complainant, if any, accordingly.
- 5.8 If the member admits that he is guilty of unprofessional conduct, the Committee may make a finding. If he is found guilty, it shall, after affording him the opportunity to make representations or submissions regarding sentence, sentence him in accordance with by-law 7.1.
- 5.9 If the member admits that he is not a fit and proper person to practice as a Loss Adjuster, the Committee may make a finding. If it is found that he is not a fit and proper person to practice as a Loss Adjuster, the Committee shall expel him.
- 5.10 The Executive Committee shall keep record of the proceedings.

6. DISCIPLINARY HEARING

- 6.1 If the provisions of by-laws 5.8 or 5.9 are not applicable or if the Executive Committee decides not to implement it and if it is of the opinion that the member is guilty of unprofessional conduct or that he is not a fit and proper person to practice as a Loss Adjuster or that the member may have contravened the Constitution or the By-Laws, the matter shall form the subject of a disciplinary hearing to be conducted by a Board of Enquiry (herein referred to as the Board), at which the member may be represented.
- 6.2 The Executive Committee shall appoint a Board of at least three persons, including a chairperson, who by virtue of their profession, education and/or experience will be suited to adjudicate the matter. The Board may co-opt one or more persons and such person will have a vote.
- 6.3 The Executive Committee shall appoint any person (herein referred to as the Appointee) to represent the Institute at a hearing and/or an appeal.
- 6.4 The Appointee shall determine the time, date and place of the hearing and shall notify the member of the purpose of the hearing, particulars of the complaint and the time, date and place of the hearing:

- 6.5 The hearing will be conducted essentially in accordance with the following procedures but the Board may depart there from if it is expedient, justified and reasonable.
- 6.5.1 The chairperson shall read the notice of the hearing and the member, if present, shall indicate his plea.
 - 6.5.2 The Appointee and then the member shall present evidence. A witness may be cross-examined, re-examined and questioned by the Board.
 - 6.5.3 The Board may call any person whose evidence may be material or re-call a witness.
 - 6.5.4 The Appointee may withdraw a charge before a finding has been made.
 - 6.5.5 At the conclusion of the member's case, the Board will hear the Appointee's and the member's submissions regarding a finding and shall make a finding.
 - 6.5.6 If the member is found guilty of unprofessional conduct, the Appointee and the member may present evidence and make representations, orally or in writing or both, regarding sentence.
 - 6.5.7 If the member, personally or in writing, admits that he is guilty of unprofessional conduct or that he is not a fit and proper person to practice as a Loss Adjuster, the Board may make a finding without hearing any evidence.
 - 6.5.8 If the member is not present at a hearing and/or has not responded in terms of by-law 6.5.7, the Board shall note a plea of not guilty. The Appointee shall produce proof of service of the notice and the hearing will continue in the member's absence and without his contribution. The Executive Committee shall notify the member of the Board's finding and sentence.

7. DISCIPLINARY POWERS

- 7.1 If a member is found guilty of unprofessional conduct or has been found to be in contravention of the Constitution or the By-Laws, the Board shall impose one or more or any of the following sentences (separately and collectively referred to as the sentence):
- 7.1.1 reprimand him;
 - 7.1.2 issue a warning;
 - 7.1.3 instruct him to take certain steps and/or to do certain things, including paying compensation, and/or to refrain from doing certain things.
 - 7.1.4 postpone the imposition of a sentence for a period not exceeding one year;
 - 7.1.5 suspend the sentence on conditions it deems fit, for a period not exceeding 3 years;
 - 7.1.6 impose a fine not exceeding R25 000 to be paid to the Institute;
 - 7.1.7 suspend his membership for a period not exceeding 24 months;
 - 7.1.8 Any other sentence that the Board may consider fit.

- 7.2 The Board shall make an appropriate award as to costs.
- 7.3 The Board shall record the proceedings, the reasons for its finding and sentence and forward the record to the Executive Committee.
- 7.4 Sentence shall be imposed after ten working days of passing of sentence unless the member appeals, in which case the sentence will be pended until finalisation of the appeal.
- 7.5 If the imposition of a sentence has been postponed or if a sentence has been suspended, and if:
- 7.5.1 at the end of such period, the Executive Committee is satisfied that there is no need to sentence the member or that the member has substantially complied with the conditions of suspension, it shall inform him that no sentence will be imposed or that he complied with the conditions of suspension.
 - 7.5.2 the imposition of a sentence has been postponed and the Executive Committee is satisfied that the member should be sentenced, it may refer the matter back to the Board for a sentence to be imposed in accordance with By-Law 7.1.
 - 7.5.3 upon enquiry at any stage during the period of suspension of a sentence, which enquiry shall include providing the member the opportunity to make representations, the Executive Committee determines that the conditions were breached, it shall enforce the sentence that was under suspension without having to refer it to a Board.

8. EXPULSION

- 8.1 If the Board finds that the member is not a fit and proper person to practice as a Loss Adjuster, it shall advise the Executive Committee, who shall, without exercising any discretion, expel the member from the Institute.
- 8.2 A member shall only be expelled after a period of ten working days of receipt by the Executive of advice from the Board, unless the member appeals, in which case the expulsion will be pended until finalisation of the appeal.
- 8.3 In the event of the Executive Committee expelling the member, the Institute must remove such member's name from the Register.

9. APPEAL

- 9.1 The Institute, represented by its Appointee, may appeal against the Board's finding or sentence and the member may appeal against any finding, sentence or Ruling. The applicant shall notify the Executive Committee of his intention to appeal, which notification shall state whether the appeal is against a finding, sentence or Ruling, within five working days of receipt of such finding, sentence or Ruling and by lodging with the Executive Committee a notice of appeal, setting out in full the grounds of appeal, within a further fifteen working days. The respondent shall lodge his reply to the applicant's notice of appeal with the Executive Committee within fifteen working days of receipt of the Applicant's Notice of Appeal.

- 9.2 The Executive Committee may, on good cause, condone a late notification, notice of appeal and the reply
- 9.3 The Executive Committee shall appoint a Board of Appeal comprising of a chairperson and not less than two others, none of whom shall be members of the Institute, who, by virtue of their profession, education and experience, will be suited to adjudicate the matter under consideration.
- 9.4 The Executive Committee shall timeously provide the respective parties and the Board of Appeal with copies of the applicant's grounds of appeal, the respondent's reply and the record of the proceedings referred to in by-law 5.10.
- 9.5 The Board of Appeal shall consider the evidence of record, the applicant's notice of appeal, the respondent's reply and the parties' arguments and shall:
- 9.5.1 Confirm the finding and/or sentence; or
 - 9.5.2 Set the finding and/or sentence aside; or
 - 9.5.3 If the finding is confirmed but the sentence is set aside, impose in its place a sentence; or
 - 9.5.4 If only a finding that has or could result in a member's expulsion is set aside, consider an appropriate sentence and replace a sentence or impose such sentence.
 - 9.5.5 Make any other order.
- 9.6 The Board of Appeal shall make an appropriate award as to costs.
- 9.7 The Board of Appeal shall record the proceedings and forward it to the Executive Committee.
- 9.8 The Board of Appeal's ruling is final and the matter shall not be subject to any other appeals or motions.

10. PROFESSIONAL INDEMNITY INSURANCE

Members are obliged to hold no less than the minimum limit of professional indemnity insurance as the Executive Committee may determine from time to time. Members shall, on the Executive Committee's request, provide proof of By-Laws May 2007. 6 cover.

11. ADMINISTRATION

- 11.1 The Institute's financial year shall end on 31st December.
- 11.2 The National Committee shall determine the location of the offices of the Institute.
- 11.3 The Executive Committee shall maintain and manage banking/savings/investment accounts

- 11.4 Any notice and communication in terms of the Constitution and By-Laws shall be in writing and shall be served personally, at the member's/institute's office, by prepaid registered post or provided that the sender, depending upon the confidentiality of the contents, first liaise with the recipient regarding the mode of communication, by fax or by e-mail. The Institute shall use the information from their records and members shall advise the Institute of any changes.
- 11.5 The National Committee shall keep members informed of all matters of common interest relating to the profession or the Institute.
- 11.6 A member may request the Institute, which shall oblige, to notify some or all members of his views or comments and/or call a vote, including a postal vote, on any matter relating to the profession or the Institute.
- 11.7 If a member is found guilty of unprofessional conduct and/or is sentenced and/or expelled, the Executive Committee shall, but not before an appeal, if any, has been finalized or abandoned:
- 11.7.1 In the event of the member having been found guilty of unprofessional conduct and/or sentenced, advise the complainant, if any, and the members.
- 11.7.2 In the event of his expulsion, advise the complainant, if any, the Regional Branches, all insurance offices, underwriters and the members.

12. POSTAL VOTES

- 12.1 The Executive Committee may call for a postal vote on any matter that requires member's consent by voting unless such matter shall only be decided upon at a General Meeting.
- 12.2 The Executive Committee calling for a postal vote, shall give all members at least fifteen working days notice which shall contain particulars of the proposal and alternatives to be voted on, the motivation, if any, the closing time and date.
- 12.3 A voting member's response shall be in a format, prescribed by the Executive Committee, that shall identify each proposal, and members may vote on some or all of the proposals.
- 12.4 If less than 50% of voting members cast a vote, the result shall have no force and effect. The Executive Committee may call for a second postal vote on the same matter within fifteen working days of the closing date and the votes then cast shall determine the result.
- 12.5 The Executive Committee may not call for a further vote on the same subject matter within three months

13. PROFESSIONAL FEES

In addition to recovering expenses necessarily incurred and to afford a member reasonable and proper remuneration for services rendered, a member shall charge a professional fee commensurate with:

- 13.1 The volume, urgency and importance of the work;
- 13.2 The complexity of the matter or difficulty or uniqueness of the work;
- 13.3 The skill, effort, specialised knowledge and responsibility involved;
- 13.4 The number, importance and complexity of documents prepared or perused;
- 13.5 The place where and circumstances in which the services were rendered;
- 13.6 The time expended;
- 13.7 The amount of money or value of property involved;
- 13.8 The importance of the matter to the client;
- 13.9 The quality of the work done;
- 13.10 The experience, qualifications and seniority of the member.

14. RULINGS

- 14.1 The Executive Committee may, with regard to any aspect relating to a member's conduct, or that of his practice, that may reflect on the member's, the profession's or Institute's dignity, prestige or status, or his breach of the Constitution and/or By-Laws, after hearing such member's views and submissions, make a Ruling on the matter.
- 14.2 By-Laws 5.4, 5.5 and 5.6 shall apply.
- 14.3 The Executive Committee shall keep record of the proceedings.
- 14.4 The member shall comply with the Ruling unless it is the subject of an appeal.

15. PUBLICITY

A member may publicise to bring his name or the name of his firm to the attention of any body or person and may communicate information on services, fee rates, qualifications, expertise and skills and may make it clear that he seeks custom.

Publicity must be with due regard to the dignity, prestige and status of the profession. It must be in good taste both as to content and presentation and shall conform with the accepted norms of legality, decency, modesty and truthfulness.

16. DEFINITIONS AND INTERPRETATIONS

Unless the context indicates otherwise:

a definition and/or an interpretation in the Constitution will apply to the By-Laws, and visa versa. The singular will include the plural and the masculine will include the feminine, and visa versa.

"**article**" means the Constitution's articles.

"**body**" and/or "**person**" and/or "**body or person**" means and include a person, authority, firm, society and a legal entity.

"Fit and Proper " means a person who is honest and has integrity.

In determining whether a person is honest and has integrity, the National Committee may refer to any information in possession of the Institute or brought to the Institute's attention.

Any of the following factors constitutes prima facie evidence that a person does not qualify in terms of the honesty and integrity requirement, namely that the person –

- a) has within a period of five years preceding the date of application been found guilty in any civil or criminal proceedings by a court of law (whether in the Republic or elsewhere) of having acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of fiduciary duty;
- b) has within a period of five years preceding the date of application been found guilty by any professional or financial services industry body (whether in the Republic or elsewhere) recognised by the Institute, of an act or dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the person;
- c) has within a period of five years preceding the date of application of membership to the Institute, been denied any membership of any body referred to in subparagraph (b) on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant;
- d) has at any time prior to the date of application of membership of the Institute been disqualified or prohibited by any court of law (whether in the Republic or elsewhere) from taking part in the management of any company or other statutorily created, recognised or regulated body, except if such disqualification has since been lifted.

Any applicant for membership of the Institute, on any level of membership, must in the application be candid and accurate and must of own accord disclose all facts or information at the disposal of, or which may be accessible to the applicant, and which may be relevant for purposes of a decision by the National Committee that the applicant complies or does not comply with the "fit and proper" requirement.

"Habitually" means, in respect of the loss adjusting practice, that the individual member must usually, frequently, routinely and regularly be engaged in a professional capacity in the investigation, project management, evaluation and adjustment of losses and claims.

"Insurance office" may, inter alia, include Insurers, Underwriters, Re- Insurers, Insurance Brokers, Insurance Claims Managers and Insurance Fund Administrators.

"loss adjusting practice" means a firm or practice, including a sole proprietor, partnership or any other legal entity, that practices within the Territory, with the exclusion of any other business, the profession of loss adjusting as it is commonly understood and accepted and that earns its main income from professional fees.

"Predominantly" means, in respect of the loss adjusting practice that the individual member must in the main act on instructions of Insurance offices and must derive his professional income primarily and for the most part from his loss adjusting endeavours.

"stationery" means advertisements, brochures, letterheads, business cards and any other stationery as may be customary.

"unprofessional conduct" means and includes, without restricting the generality of the term, dishonourable or unworthy conduct or conduct unbecoming the profession of Loss Adjusting.

"voting member" means Honorary Members, but only such Honorary Members who also are habitually engaged as an independent Loss Adjuster in a loss adjusting practice within the Territory, Honorary Life Members, Fellows, Associates and Accredited Members.

"working day" means any day with the exclusion of a Saturday, Sunday and public holiday.

"SAQA" means the South African Qualifications Authority established in terms of the provisions of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

"ETQA" means the Education and Training Quality Assurance Body.

"NQF" means the National Qualifications Framework of the SAQA as set out in the SAQA Regulations published in *Regulation Gazette* No. 6140 of 28 March 1998.

"FETC" means the Further Education and Training Certificate.

"Appropriate" certificate, diploma, skills programme or degree, refers to such qualification which equips a member to render a professional loss adjusting service in his specific category of membership and the type of adjustments undertaken;

"Continuous professional development or CPD" means a process of learning and development, with the aim to enable the member to maintain capabilities to perform competently within his appointed level of membership in the Institute;

“CPD programmes or activities” means industry or professional conferences, seminars, workshops, financial services specific or professional qualifications, structured self-study programmes, product seminars, attendance at industry road shows and industry training, subject to approval by the Institute;

“Professional skills” means the various types of abilities required to apply professional knowledge and professional values, ethics, and attitudes appropriately and effectively in a professional context, including, technical and functional skills, organisational and business management skills, personal, interpersonal and communication skills, as well as intellectual skills;

“Professional knowledge” means such topics that make up subjects related to the financial services industry as well as other related business disciplines that, together, constitute the essential body of knowledge of professionals in the loss adjusting industry;

“National Learner Record Database (NLRD)” means an information system used and managed by SAQA to record the achievement of individuals in terms of qualifications, unit standards, professional designations and other information as may be required to manage the National Qualifications Framework

“Qualification” has the same meaning as defined in the SAQA Act;

“QCTO or Quality Council for Trades and Occupations” means QCTO as defined in the Skills Development Act; (this replaced INSQA)

“Recognition of prior learning (RPL)” means the comparison of the previous learning and experience of a learner against specified learning outcomes required for:

- The award of credits for a specified unit standard or qualification;
 - Access to further learning;
 - Recognition in terms of meeting minimum requirements for a specific task;
 - Placement at a particular level in the Institute; or
 - Advanced standing or status;
-