



THE SOUTHERN AFRICAN INSTITUTE FOR BUSINESS ACCOUNTANTS NPC

REGISTRATION NUMBER: 1990/005364/08

("SAIBA")

BOARD NOMINATION, ELECTION AND APPOINTMENT POLICY

Reference number	BoardNomPol-003
Initial approval	Social and Ethics Committee
Final approval	Board of Directors
Amendments	Cosmetic changes – dates and grammar
Date of amendments	June 2020
Review date by the Committee	June 2020
Review date by the Board	June 2020
Effective date	
Next review date	June 2021

DEFINITIONS

Unless the context indicates otherwise, the following words or terms of expression have the meanings subscribed to them as set out hereunder –

“**AGM**” means the annual general meeting of members of SAIBA in terms of s61(7) of the Companies Act;

“**Board**” means the Board of Directors as constituted from time to time in accordance with the Companies Act and the Mol;

“**Committee**” means the Social and Ethics, Remuneration and Nominations Committee;

“**Companies Act**” means the Companies Act, 71 of 2008 and any regulations published thereunder from time to time, all as amended from time to time;

“**Director**” means a member of the Board, as contemplated in section 66 of the Companies Act, or an alternate director of SAIBA and includes any person occupying the position of a director or alternate director, by whatever name designated, as defines in section 1 of the Companies Act;

“**King IV**” the King IV Report on Corporate Governance for South Africa 2016, as amended or updated from time to time;

“**Mol**” the memorandum of incorporation of SAIBA adopted in compliance with the Companies Act, as amended or replaced from time to time;

“**Policy**” means this Nomination, Election and Appointment Policy;

“**SAIBA member**” means a designation holder in good standing whose fees are paid up to date and whose CPD hours are logged in line with requirements for each designation as per the SAIBA CPD Policy;

“**Substance**” normally requires one or more of the following criteria to be met: a) a minimum annual operating revenue or budget more than R10 million; b) total employees more than 20; and c) total assets more than R10 million.

1. INTRODUCTION

The Board acknowledges the need for a policy detailing the procedures for the nomination, election and appointment to the Board as recommended in King IV, subject to the provisions of the Companies Act, the Mol and any other applicable law or regulatory provision. It is recognised that Directors should be appointed through a formal and transparent process and should be assisted by the Committee, subject to SAIBA member approval. It is in the best interest of SAIBA members that the Board be properly constituted from the viewpoint of knowledge, skills, experience, diversity and independence.

2. PURPOSE OF THE POLICY

The purpose of the Policy is to ensure that the Board comprises the appropriate balance of knowledge, skills, experience, diversity and independence for the Board to discharge its

governance role and responsibilities objectively and effectively, and that suitable and appropriate candidates are identified and recommended to become Board members.

3. COMPOSITION OF THE BOARD

3.1 The Board will comprise of no less than 5 (five) and not more than 11 (eleven) directors and will be fairly represented by independent and non-independent individuals respectively. Directors are categorised as follows:

a) Non-executive Directors (independent non-members)

Nominated, elected and appointed from nominations who are not required to be members of SAIBA.

b) Non-Executive Directors (members - not independent)

Nominated, elected and appointed from nominations of members (in good standing) of at least 3 (three) years uninterrupted membership of SAIBA.

c) Executive Directors (ex-officio)

i. One ex officio seat for the Chief Executive Officer, if any;

ii. One ex officio seat for the Chief Financial Officer, if any.

4. TERM OF OFFICE

4.1 An elected Board member will serve for a term of 3 (three) years with a maximum of 1 (one) additional term. Thereafter the Director will be subject to a 1 (one) year 'cooling-off' period before being eligible to stand again for election if so nominated.

4.2 *Ex officio* Directors are members of the Board by virtue of their position within the organisation and will serve on the Board according to the applicable terms of the particular office.

5. PERFORMING A NEEDS ASSESSMENT FOR DIRECTORS

5.1 When determining the requisite number of Directors, the appropriate mix of knowledge, skills and experience, including the business, commercial and industry experience should be determined. In addition to their knowledge, skills and experience, independence and diversity targets relating to the composition of the Board should additionally be considered.

5.2 The Board should comprise at least 3 (three) Directors, this is in addition to the number of Directors that SAIBA must have to satisfy any requirement to appoint an audit committee, or a social and ethics committee, in terms of the Companies Act or the Mol.

5.3 The Board and majority of Directors appointed should comprise an appropriate mix of executive, non-executive and independent non-executive Directors.

5.4 A minimum of 2 (two) executive directors should form part of the Board, ie the Chief Executive Officer ("CEO") and the Chief Financial Officer.

5.5 Non-executive directors are formally appointed for a period of 3 (three) years.

5.6 A third of the Directors must be available for re-election by rotation annually, generally at the AGM.

- 5.7 The independence of an independent non-executive Director who serves more than 9 (nine) years will be reviewed by the Board and SAIBA members on a continuous basis.
- 5.8 The Board should include a chairperson and the CEO. These roles should be separate.
- 5.9 No single Director will be allowed to dominate decision-making.
- 5.10 Directors should serve SAIBA in a fiduciary capacity on a voluntary basis (no remuneration).
- 5.11 A description of the Board's requirements should be made available to SAIBA members to ensure they are aware of the skills and experience of the potential Directors required on the Board.

6. THE NOMINATION STRUCTURE AND PROCEDURE

- 6.1 The Board has appointed the Committee to assist it with the nomination process. The role of the Committee relating to the nomination of new directors is to establish and implement a formal process for the appointment of directors and to consider the nominations.
- 6.2 The Committee will –
 - 6.2.1 before nominating a candidate, consider the collective knowledge, skills and experience required by the Board; the suitable size of the Board, the diversity of the Board and whether the candidate meets the appropriate fit and proper criteria;
 - 6.2.2 perform independent reference and background checks, as well as independently verify qualifications of all Board candidates prior to nomination;
 - 6.2.3 request confirmation from candidates of other professional commitments and whether they have sufficient time available to fulfil the responsibilities;
 - 6.2.4 after receiving nominations, consider suitable candidates by having regard to the eligibility criteria in clause 7 below;
 - 6.2.5 after due consideration of all suitable candidates, recommend the name of candidates to the Board for consideration to be put forward to the SAIBA members at the AGM, who will elect the new non-executive director/s for a period of 3 (three) years at the AGM;
 - 6.2.6 Human resource profiling as determined by the Committee from time to time.

7. ELIGIBILITY CRITERIA

- 7.1 The Committee should ensure that the composition of the Board has an appropriate mix of executive, non-executive and independent directors, considering the size of SAIBA, the optimal mix of knowledge, skills, experience, independence, the requirement in numbers for Board committees, quorum requirements and regulatory requirements.
- 7.2 When considering the suitability of a candidate, the Committee should have regard to the following eligibility criteria –
 - 7.2.1 the nominee should be a valid SAIBA member;

- 7.2.2 the nominee should have at least 5 (five) years cumulative experience as –
- a director of a company of substance;
 - a company secretary of a company of substance;
 - a partner, associate or senior manager of a professional practice of substance, ie attorneys; accountants; or,
 - tertiary academic personnel at the level of, or equivalent to, a professor or senior lecturer at an entity of substance; or
 - a partner, associate or senior manager of auditing and IT implementation and management;
 - a partner, associate or senior manager of human resources management and/or organisational design and management
 - a partner, associate or senior manager of disciplinary matters and/or ethics;
 - a director or equivalent position at a non-profit organisation of substance; or
 - a business development and strategy specialist.

8. PROCESS FOR ELECTION AND APPOINTMENT

- 8.1 A person becomes entitled to serve as a director of SAIBA when that person –
- 8.1.1 has been elected as director, or holds an office, title, designation or similar status entitling that person to be an ex officio director of SAIBA; and
- 8.1.2 has delivered to SAIBA a written consent to serve as its director.
- 8.2 As far as possible, no more than 1 (one) Director will serve on any committee of SAIBA other than a Board committee as determined in the memorandum of incorporation.
- 8.3 Retiring Directors may be re-elected to office for 1 (one) additional term. Thereafter the Director will be subject to a 1 (one) year 'cooling-off' period before being eligible to stand for election if so nominated.
- 8.4 The election of the Board will take place in the same manner as the voting for an ordinary resolution, to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and in each vote to fill a vacancy where each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- 8.5 Elected and appointed Directors on the Board will retire from office no later than the third annual general meeting after their election and newly elected Directors will assume their office as Directors at that meeting.
- 8.6 The Directors elected to the Board at the AGM may fill any vacancies remaining on the Board

after the AGM, by appointing such executive Directors to those vacancies as soon as possible after the AGM.

- 8.7 In the event that the number of Directors, together with any ex officio Directors, is fewer than the minimum number of Directors required for SAIBA in terms of the Companies Act or the Mol, the Board will call a members' meeting within 40 (forty) business days after the event to elect sufficient Directors to fill all vacancies on the Board at the time of the election.
- 8.8 The Board may appoint a chief executive officer who will be an ex officio Director on the Board.
- 8.9 A person who holds office or acts in the capacity of an *ex officio* Director has all the –
- 8.9.1 powers and functions of, except to the extent that Mol restricts the powers and functions or duties, of an ex officio Director, and
- 8.9.2 duties of any other Director of SAIBA, and is subject to all the liabilities, of any other Director of SAIBA.
- 8.10 The Board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a Director on a temporary basis until the vacancy has been filled by election in terms of the Mol. During that period, any person so appointed has all the powers, functions and duties and is subject to all the liabilities as any other Director.
- 8.11 A person elected or appointed as an alternate for a Director acts for all intents and purposes in the place of, and not for or as a representative of, the Director for whom he is an alternate, and will be treated as a Director while he acts in the place of the Director for whom he is an alternate.
- 8.12 While acting in the place of the Director for whom he is an alternate, the alternate Director may generally exercise all the rights of that Director, will, in all aspects, be subject to the terms and conditions existing with reference to the appointment, rights and duties as Director and the holding of office of that Director, and will not have any claim of any nature whatsoever against SAIBA for any remuneration with respect to his services as a director or his appointment as an alternate.
- 8.13 A person may be elected or appointed as an alternate for 1 (one) or more Directors.
- 8.14 An alternate will only be entitled to vote at any meeting if the Director for whom he is an alternate is not present at that meeting, provided that the alternate may also attend a meeting at which the Director for whom he is an alternate is present if the other Directors present at the meeting resolve that he may attend, provided further, that in the circumstances when the Director for whom he is an alternate, is present, then the alternate will not be counted towards a quorum and will recuse himself from the meeting if requested by any Director to do so.
- 8.15 An alternate will only be entitled to sign a round robin resolution if the director for whom he is an alternate is then absent from the Republic of South Africa or is out of reach of communication or is incapacitated.
- 8.16 The appointment of an alternate will cease, and he/she will vacate his office as an alternate, if–

- 8.16.1 the alternate was appointed by the Board and the Board gives notice to that alternate terminating his/her appointment;
- 8.16.2 the person (for whom another person has been elected or appointed as an alternate) ceases to be a Director, or ceases to be entitled to serve as a Director, for any reason; or
- 8.16.3 an event occurs, or circumstances arise, in relation to an alternate, which if he were a full Director would cause him to cease to be entitled to serve as a Director in terms of the Companies Act or the Mol.
- 8.17 A person will cease to be a Director and a vacancy arises on the Board –
- 8.17.1 when the person's term of office as director expires,
- 8.17.2 in any case, if the person resigns or dies;
- 8.17.3 in the case of an ex officio director, ceases to hold the office, title, designation or similar status that entitled the person to be an ex officio director;
- 8.17.4 becomes incapacitated to the extent that the person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time;
- 8.17.5 is declared delinquent by a court or placed on probation under conditions that are inconsistent with continuing to be a Director of SAIBA;
- 8.17.6 becomes ineligible or disqualified in terms of section 69 subject to section 71(3);
- 8.17.7 is removed –
- by resolution of the members in terms of section 71(1);
 - by resolution of the board in terms of section 71(3); or
 - by order of the court in terms of section 71(5) or (6).
- 8.18 If a vacancy arises on the Board, the Board may elect a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director on temporary basis until the earlier of the vacancy being filled by election by the ordinary members or the conclusion of the next general meeting after the temporary filling.
- 8.18.1 If a vacancy arises on the Board and as a result thereof, SAIBA does not have the minimum number of Directors required by the Companies Act or the Mol, the Board will within the period of 3 (three) months from the date such a vacancy arose, continue to function and will fill the vacancy on a temporary basis as provided for above or convene a general meeting or propose a round robin resolution for the purposes of the ordinary members conducting an election to fill such vacancy .
- 8.18.2 After the expiry of the 3 (three) month period, the remaining Directors will only be permitted to act for the purposes of filling the vacancy or calling a general meeting of ordinary members or proposing a round-robin resolution for purposes of an election.

- 8.19 If at any time the number of Directors falls below the number required as a quorum, the continuing Directors may act to appoint sufficient Directors to constitute a quorum or for convening a general meeting but for no other purpose.
- 8.20 A Director elected by ordinary members may be removed by an ordinary resolution adopted at an ordinary members' meeting entitled to exercise voting rights in the election of that Director, despite anything to the contrary in the Mol, or any agreement between SAIBA and that Director, or between any members and that Director.
- 8.21. Before the SAIBA members consider the above resolution –
- 8.21.1 the Director concerned must be given notice of the meeting and the resolution. The notice must be equivalent to that which a member is entitled to receive, irrespective of whether the Director is a member of SAIBA or not; and
- 8.21.2 the Director must be afforded a reasonable opportunity to make a presentation to the meeting either in person or through a representative before the resolution is put to a vote.
- 8.22 If a member or a Director contends that a person should be removed as a Director by the Board claiming the Director –
- 8.22.1 has become ineligible or disqualified in terms of section 69; or
- 8.22.2 has become incapacitated to the extent that the Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time; or
- 8.22.3 has neglected or been derelict in the performance of the functions of a Director, that member or Director will first submit to the Board each of its contentions and the specific grounds of each such allegation and will submit to the Board all evidence available on which the member or Director relies for making the contention and allegation. On receipt thereof, the Board must study such submission, investigate the allegation and determine the matter by resolution in accordance with and subject to the procedures and its power to do so.
- 8.23 The Mol prohibits the removal of a Director by round-robin resolution of members in terms of section 60 or directors acting other than at a meeting in terms of section 74 where a decision may be adopted by written consent of the majority given either in person or by electronic communication, since the Director concerned must be afforded a reasonable opportunity to make a presentation at a Board meeting, in person or through a representative, before the resolution to remove him is put to a vote.
- 8.24 A Director will be entitled to resign as Director on 30 (thirty) days' written notice to SAIBA or on such shorter notice as the board may determine.

8. RELATED DOCUMENTS

The Policy is to be read in conjunction with the Memorandum of Incorporation.

9. **DEVIATIONS FROM THE POLICY**

Any deviations from the Policy are subject to the approval of the Board on recommendation by the Committee.

10. **REVIEW OF THE POLICY**

The Committee will annually review the Policy to ensure optimal effectiveness and recommend any changes it considers necessary for Board approval.

11. **APPROVAL OF THE POLICY**

The Policy is effective from the date on which it is approved by the Board.

Name

Signature

Position

Date