

## **A.2. Code of Ethics**

### **A.2.1. Definition**

"Board" means the Board of Directors of Chartered Secretaries Southern Africa.

"Firm" means any business in which the participants are members

"Member" means any person who is named and in possession of one or more of the following certificates issued by the Institute, that is a Certificate of-

Fellowship - FCIS  
Associate - ACIS and  
a practising certificate.

"Practitioner" means a member who is so named and in possession of a current practising certificate issued by the Institute.

"Professional Practice" means any member, Partnership, Company or Close Corporation whose members are practitioners and which offers or provides or holds itself out as offering or providing advice or service to the public for fees.

#### NOTES:

1. In this code, words implying the singular shall include the plural, and words denoting the masculine gender shall be deemed to include the other genders and *vice versa*.
2. Whilst a Graduate is not a member of the Institute in terms of its Charter and Bye-laws he shall be bound by the provisions of this Code as if he were a member.

### **A.2.2. Applicable to all members**

This code demonstrates the standard of professional conduct expected of members.

#### **A.2.2.1. General Fundamental Principles**

The ethics described in this code are issued by the Board for guidance of members and to assist members to conduct themselves in a manner which the Board considers appropriate to the profession in general and to Chartered Secretaries in particular. However, as misconduct cannot be defined with exactitude for all circumstances, but will need to be determined in the light of the circumstances of each individual case, it follows that the Board cannot promulgate mandatory tenets, the breach of which in each case can necessarily be classified misconduct.

#### **A.2.2.2.**

This code is issued in the context of the authority of the Board to facilitate the enforcement of ethical standards through its disciplinary procedures.

Failure to observe the provisions of the Code does not (as indicated above) *ipso facto* constitute misconduct, but does mean that the member may be at risk in having to justify his actions in answer to a complaint.

### **A.2.2.3**

The Memorandum of Incorporation of the Institute requires the observance of the rules of conduct as a condition of membership and render a member liable to disciplinary action if found guilty of misconduct, which includes, but is not confined to, any act or default likely to bring discredit to the member, the Institute or the profession. Nevertheless, the Board considers it desirable to be more explicit in particular areas.

### **A.2.2.4**

Members are required to uphold the Institute's Charter and comply with its Bye-laws.

### **A.2.2.5**

Members are required to exercise integrity, honesty, diligence and due care in carrying out their duties and responsibilities. They shall conduct themselves with courtesy and consideration towards all with whom they come into contact in the course of their professional work.

### **A.2.2.6**

Members shall at all times be cognizant of their responsibilities as professional persons towards the wider community. They shall follow the guidance of this Code and in circumstances not provided for, should conduct themselves in a manner consistent with the good reputation of the profession and the Institute.

### **A.2.2.7**

Members shall at all times safeguard the interests of their employers, colleagues and clients provided they shall not knowingly be a party to any illegal or unethical activity.

### **A.2.2.8**

Members shall not enter any agreement or undertake any activity which may be in conflict with the legitimate interests of their employer or client or which would prejudice the performance of their professional duties.

### **A.2.2.9**

Members shall ensure the currency of their knowledge, skills and technical competence in relation to their professional activities.

### **A.2.2.10**

Members shall refrain from conduct or action which detracts from the reputation of the Institute.

### **A.2.2.11**

In accepting or continuing a professional assignment a member should always have regard to any factors which might reflect adversely upon his integrity and objectivity in relation to that assignment.

**A.1.3. For practitioners**

**A.1.3.1 Professional Independence**

**A.1.3.1.1.**

Professional independence is a concept fundamental to a member in professional practice. It is essentially an attitude of mind characterised by integrity and an objective approach to professional work.

**A.1.3.1.2.**

A member in professional practice shall be, and be seen to be, free in each professional assignment he undertakes of any interest which might detract from objectivity. The fact this is self-evident in the exercise of the reporting function must not obscure its relevance in respect of other professional work.

**A.1.3.1.3.**

It is the duty of the practitioner to present or report on information objectively. That duty is the essence of professionalism and is appropriate to all members in professional practice.

**A.1.3.1.4.**

It is the responsibility of practising members to use their best endeavours to ensure that the guidance herein given is followed in their practices.

**A.1.3.1.5.**

Personal relationships can affect objectivity. There is a particular need, therefore, for a practice to ensure that its objectivity approach to any assignment is not endangered as a consequence of any personal relationship. By way of example, problems may arise where the same partner or senior staff member works for a number of years on the same assignment or where anyone in the practice has a mutual business interest with an officer or employee of a client or has an interest in a joint venture with a client. Such problems can also exist in cases of close friendship or relationship by blood or marriage or where work is being done for a company dominated by one individual.

**A.1.3.1.6.**

Where a financial involvement with a client may affect objectivity the member shall seriously consider his position. Such involvement can arise in a number of ways, of which a shareholding in a company upon which the practice is retained to report is a typical example.

**A.1.3.1.7.**

Acceptance of goods or services from a client may be a threat to independence. These should not be accepted by a partner, his spouse or minor child or by the staff of the practice save on terms no more favourable than those available to the generality of the employees of the client. Acceptance of undue hospitality poses a similar threat.

**A.1.3.1.8.**

Where advice given to a client is such that, if acted upon, it will result in commission being earned by the practice or anyone in it, special care shall be taken that the advice is in fact in the best interests of the client. The client shall be informed, in writing, both of the fact that commission will be received and, as soon as practicable, of the amount and the terms of such commission.

**A.1.3.1.9.**

Whenever a practice is asked to accept an appointment, consideration shall be given to whether acceptance might give rise to a situation in which independence may be compromised, whether by a prospective conflict of interest or otherwise. All reasonable steps shall be taken to establish that acceptance is not likely to threaten independence.

**A.2.3.2. Confidentiality**

**A.2.3.2.1.**

Information acquired in the course of professional work shall not be disclosed except where consent has been obtained from the client or where there is a public duty or where there is a legal or professional right, obligation or duty to disclose.

**A.2.3.2.2.**

A member acquiring information in the course of professional work shall neither use nor appear to use that information for his personal advantage or for the advantage for a third party.

**A.2.3.3 Obtaining Professional Work**

**A.2.3.3.1**

A member shall not obtain or seek work for his or another member's practice in an unprofessional manner.

**A.2.3.3.2**

A member may seek publicity for his services and achievements and may advertise his services, but in so doing shall have regard to the standards for the time being set by the Institute. Those standards currently applicable are contained in A.2.4 of this code.

**A.2.3.3.3.**

In addition to meeting the requirements of the above standards, in particular as to legality, decency, honesty and truthfulness, a member shall ensure that his promotional material is in good taste both as to content and presentation and that it does not belittle the services offered by others, whether members or not, either by claiming superiority for the services of a particular member or otherwise.

**A.2.3.3.4.**

Whilst a practitioner may include in advertisements a list of the services available

from his firm, he shall abide by the requirements of section A.2.3.4 of this part in relation to any words of description applied to the firm.

### **A.2.3.3.5.**

In conformity with the obligation (contained in clause A.2.3.6.2 of this Code) not to mislead clients as to the precise range of services that a quoted fee is intended to cover, practitioners shall avoid making fee comparisons or quoting fees in advertisements, but may offer a free consultation at which levels of fees will be discussed.

### **A.2.3.3.6.**

A practitioner may not make or instigate an unsolicited approach to a non-client for the purpose of obtaining professional work by making an uninvited visit or by telephoning either to solicit business or to make an appointment to visit.

### **A.2.3.3.7.**

Direct mailing methods may be used by practitioners to promote their practices among non-clients. This includes the mailing of letters to a particular non-client or batches of letters to non-clients and the mailing of other technical or promotional material, or by such other means as is not contrary to the requirements of A.2.3.3.6 above, but such distribution shall not be followed up by telephone or visit save at the specific request of the recipient, nor in such other manner as to amount to harassment.

### **A.2.3.3.8.**

Material distributed as provided for in A.2.3.3.7 above is subject to the same constraints as are laid down in respect of publicity and advertising referred to in A.2.3.3.2 above.

### **A.2.3.3.9.**

A practising member shall not give or offer any commission, fee or reward to a third party, not being either his employee or another practitioner, in return for the introduction of a client, but may pay for normal marketing services.

### **A.2.3.3.10.**

A practitioner whose promotional activities are found not to conform to the guidelines set out in the above paragraphs will be subject to disciplinary enquiry.

### **A.2.3.3.11.**

For the purposes of this clause promotional activities carried out in the name of a firm shall be construed as promotional activities carried out by the individual members of that firm, whether carried out personally or through agents.

### **A.2.3.3.12.**

A practitioner shall not hold himself out as carrying on business of a kind which is normally carried out by a practitioner, for and on behalf of his employer unless his

employer is permitted to describe himself/itself as "Chartered Secretaries" under the bye-laws.

### **A.2.3.4. Practice names and descriptions**

#### **A.2.3.4.1.**

It is recommended that a practitioner shall use his designated letters at all times and he may describe himself personally as a Chartered Secretary and/or Chartered Administrator.

#### **A.2.3.4.2.**

A practicing firm's name and operations should be consistent with the dignity of the profession.

#### **A.2.3.4.3.**

A practicing firm's name should not be misleading as, for example, by leading to confusion with that of another firm. It is the custom of the profession for members of the firm to practise under a firm's name based upon names of past or present partners in the firm itself or in a firm with which it has merged or amalgamated, but this is not obligatory.

#### **A.2.3.4.4.**

Whilst there is no objection to a firm entitled to the description "Chartered Secretaries and Administrators" so describing itself and, in addition, including on its notepaper a list of services it particularly wishes to offer, it should not incorporate any of that list of services into the general description of the firm (e.g. "Chartered Secretaries and Taxation Advisers"). The latter description would erroneously imply that the service(s) so specified are not of themselves a part of the normal range of services that Chartered Secretaries provide.

#### **A.2.3.4.5.**

Where a firm does not use the description "Chartered Secretaries" it is entitled to adopt a description indicating a specialisation in any area or areas of work.

#### **A.2.3.4.6.**

If any person named on the letterhead as a member of a firm is not a member of the Institute the firm may not describe itself on its letterhead or elsewhere as "Chartered Secretaries".

### **A.2.3.5. Professional appointments**

#### **A.2.3.5.1.**

It is natural that a member in professional practice will endeavour to expand his practice, but in so doing he should not seek to displace an incumbent in a manner which would reflect negatively on the profession or the Institute.

#### **A.2.3.5.2.**

A member invited to undertake professional work additional to that already being carried out by another practitioner, who will still continue with his existing duties, should, as a matter of professional courtesy, notify the other practitioner of the work he is undertaking. This notification need not be given if the client advances a valid reason against it. The member undertaking the additional work has the right to expect the continuing practitioner's full co-operation in carrying out his assignment and *vice versa*.

### **A.2.3.5.3.**

A client might sometimes request services requiring highly specialised knowledge. If a practitioner lacks the expertise necessary to render such services, he should call upon a fellow practitioner for assistance or refer the entire engagement to an appropriately qualified person. Such assistance or referral brings to bear on the client's needs both the referring practitioner's knowledge of the client's affairs and the technical expertise of the specialist brought into the engagement. If both serve the client best in their own area of ability, all parties are well served.

### **A.2.3.5.4.**

The wishes of the client must be paramount in the choice of his professional advisers, whether or not special skills are involved. Accordingly a practitioner shall not attempt to restrict in any way his client's freedom of choice in obtaining specialised advice and, when appropriate, should encourage him to do so.

### **A.2.3.5.5.**

Clients have an indisputable right to choose their professional advisers and to change to others should they so desire.

### **A.2.3.5.6.**

Whilst it is essential that the legitimate interests of clients are protected, it is also important that a practitioner who is asked to replace an incumbent has the opportunity to ascertain whether there are any professional or other reasons why he should not accept the appointment. He cannot effectively do so without direct communication with the incumbent. The practitioner should, therefore, not accept the appointment without first communicating, if possible in writing, with the incumbent to enquire whether there are any reasons, professional or otherwise, why the practitioner should not accept the appointment. This applies whether or not the incumbent is a member of the Institute.

### **A.2.3.5.7.**

Communication enables the practitioner to ascertain whether the circumstances in which a change in appointment is proposed are such that he can properly accept the appointment and also whether he would wish to do so.

In addition, such communication helps to preserve the harmonious relationships which should exist between practitioners on whom clients rely for professional advice and assistance.

### **A.2.3.5.8.**

Communication between parties serves –

- to protect a member from accepting an appointment in circumstances of which he is not fully aware;
- to protect the minority proprietors of a business who might not be fully informed of the circumstances surrounding the proposed change;
- to protect the interests of the incumbent where the proposed change arises from, or is an attempt, to interfere with the conscientious exercise by him of his duties as an independent professional.

**A.2.3.5.9.**

Before accepting an appointment involving recurring professional work hitherto carried out by an incumbent the member should:

- ascertain whether the prospective client has informed the incumbent of the proposed change and has given him permission, preferably in writing, to discuss the client's affairs fully and freely so as to enable the practitioner to decide whether he should accept the appointment;
- when satisfied with the reply received from the prospective client, request his permission to communicate with the incumbent(s). If such permission is refused he should, in the absence of exceptional circumstances of which he is fully aware, and unless he can satisfy himself as to the necessary facts by other means, decline the appointment;
- on receipt of permission, ask the incumbent, if possible in writing, to inform him of any matters of which he should be aware before deciding whether or not to accept the appointment and, if there are any such matters, to provide him with all the details necessary to enable him to come to a decision;
- wherever possible obtain evidence of the written resignation of the incumbent.

**A.2.3.5.10.**

The incumbent, on receipt of the communication referred to above, shall forthwith:

- reply, if possible in writing, advising whether there are any reasons why the practitioner should not accept the appointment and;
- if there are any such reasons or other matter which should be disclosed, ensure that he has the permission of the client to give details of this information to the member. If permission is not granted the incumbent should report that fact to the practitioner;
- on receipt of permission from the client, disclose all information needed by the practitioner to enable him to decide whether or not to accept the appointment and discuss freely with the practitioner all matters relevant to the appointment of which the latter should be aware.

**A.2.3.5.11.**

If the practitioner does not receive, within a reasonable time, a reply to his communication to the incumbent and he has no reason to believe that there are any exceptional circumstances surrounding the proposed change, he should endeavour to communicate with the incumbent by some other means. If he is unable to obtain a satisfactory outcome in this way, he should send a further registered letter, stating that he assumes there are no professional or other reasons why he should not accept the appointment and that he intends to do so.

### **A.2.3.5.12.**

The fact that there may be fees owing to the incumbent is not a reason why the practitioner should not accept the appointment

### **A.2.3.5.13.**

The incumbent should transfer all books and papers which are the property of the client, which are in, or may come into, his possession, to the newly appointed practitioner within a reasonable time frame after the change in appointment has been effected unless he has a lien over any such books and papers for the payment of charges outstanding. He should in either case advise the client accordingly.

### **A.2.3.5.14.**

A practitioner may act alone or in association with members of other professional bodies to provide professional services usually undertaken by a practitioner so long as the practitioner or any of his associates do not do anything which is or may be in breach or contravention of any legal, ethical or other requirement governing members of such professional bodies.

## **A.2.3.6. Fees**

### **A.2.3.6.1.**

A practitioner is entitled to charge for his services such fees as he may consider appropriate in connection with the work he undertakes.

### **A.2.3.6.2.**

The fact that one practitioner may charge a lower fee than another for undertaking the same or similar work is not improper provided care is taken to ensure that the client is not misled:

- as to the precise range of services that a quoted fee is intended to cover (in which connection that practitioner should provide the client with an engagement letter),
- as to the likely level of future fees for any work undertaken for the client.

### **A.2.3.6.3.**

If, in the course of an investigation into allegations of unsatisfactory work on the part of a practitioner, there is evidence of the work having been obtained or retained through quoting a fee that is not economic in terms of the time needed and

quality of staff necessary to perform that work to a satisfactory professional standard, that factor is likely to be taken into account in considering the member's conduct having regard to the obligations placed upon a member under General Fundamental Principle A.2.2.11 of this Code.

**A.2.3.6.4.**

Fees should not be charged on a percentage or similar basis, save where that course is authorised by statute or is generally accepted practice for certain specialist work; nor shall instructions be accepted on a contingency fee basis save in circumstances set out in sub-clause A.2.3.6.5 below.

**A.2.3.6.5.**

In certain limited circumstances fees cannot realistically be charged save on a contingency fee basis; to require otherwise, would be to deprive potential clients of professional assistance, the capacity of the clients to pay being dependent upon the success or failure of the venture. Examples are matters such as advising on a management buy-out or the raising of venture capital.

Where any work is subject to a contingency fee, the capacity in which a practitioner has worked and the basis of his remuneration shall be made clear in any document on which a third party may rely.

**A.2.3.6.6.**

The attention of practitioners is directed to the provisions of A.2.4 of this Code which contains details of guidelines as approved and issued by the Board and relating to members advertising their services.

**A.2.3.7      Mixed and Multidiscipline Practices**

**A.2.3.7.1.**

If a practitioner acts in association with non-members in the provision to the public of professional services he thereby accepts responsibility to the Institute for ensuring that the association is conducted in accordance with the ethical and other requirements of the Institute.

**A.2.3.7.2.**

A practitioner may act in association with members of other professional bodies to provide professional services, so long as the practitioner and his association do nothing which is in breach of any legal, ethical or other requirements governing members of any of the relevant professional bodies.

**A.2.3.7.3.**

A practitioner who is also a member of another professional body shall not, in providing services usually undertaken by a practitioner, do anything in breach of any legal, ethical or other requirement governing members of that other professional body.

**A.2.3.8.      Clients' Monies**

A practitioner is strictly accountable for all clients' monies received by him and these shall be deposited without delay into a separate bank account. Such moneys shall be kept from all other monies in his hands and be applied only for the purposes of the client. They shall be held or disbursed by the practice in accordance with the instructions of the person from whom or on whose behalf they are received.

### **A.2.3.9. Agencies**

A practitioner contemplating acceptance of an appointment as agent of a building society, insurance company or other organisation which invites the public to place funds in its hands by way of deposit, investment or otherwise shall satisfy himself that such acceptance is not made inappropriate by reason of:

- the nature of the services he is to provide as agent;
- the manner in which those services may be brought to the attention of the public;
- the manner in which he or his firm may be publicised; and
- take all reasonable steps to assure himself that the undertaking he may represent is properly conducted and financially sound.

#### **A.2.3.9.1.**

Practitioners acting as agents shall have in mind the principles set out in clause A2.3.3.1 that they must neither obtain nor seek professional work in an unprofessional manner. It follows that a practitioner should not use any agency in such a way as improperly to attract work to his practice

#### **A.2.3.9.2.**

A practitioner appointed as agent may permit the name, address and description of his firm to appear in any literature or advertisement published by the undertaking. In the case of an advertisement or circular describing the facilities available through the agency, the practitioner's details should appear without undue prominence in relation to the rest of the wording.

#### **A.2.3.9.3.**

The attention of practitioners is drawn to clause A2.3.1.8 regarding the disclosure to clients of commissions received by the practitioner in connection with the client's affairs.