

## MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY

Name of company: **CORPORATE COUNSEL ASSOCIATION OF SOUTH AFRICA NPC**

Registration No.: K2019441573/08

**This MOI was adopted by special resolution passed on 24 June 2020.**

### 1. INTERPRETATION

In this MOI:

- 1.1 words that are defined in the Companies Act but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act.
- 1.2 unless the context otherwise requires:
  - 1.2.1. **"Board"** shall mean those Members of the Company, elected at the annual general meeting, who have been appointed as Members of the Board and who have accepted such appointment;
  - 1.2.2. **"Chairman"** shall mean the Chairman of the Board of the Company as elected by the Board;
  - 1.2.3. **"Companies Act"** means the Companies Act, 2008, as amended, or any legislation which replaces it;
  - 1.2.4. **"Company"** means **Corporate Counsel Association of South Africa NPC** or by whatever other name it may be known from time to time. The name of the Company shall be abbreviated as **CCASA**.
  - 1.2.5. **"Corporate Counsel"** means any person (whether called a corporate counsel, legal adviser or by any other title) who is employed, on a full-time or part-time basis, by any employer whose main business is not the provision of legal advice or services, primarily to provide legal advice or services, either:
    - 1.2.5.1. to the employer or its associates; or
    - 1.2.5.2. to persons who are customers of the employer or its associates for reasons other than merely obtaining such legal advice or services;
  - 1.2.6. **"Deliver"** means deliver in the manner in which the Company is entitled to give notice, including but not limited to delivery by post, electronic means, by hand or delivery in accordance with the Companies Act;
  - 1.2.7. **"Effective Date"** means the date on which the Companies Act came into operation, namely 01 May 2011;

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- 1.2.8. **"Executive Director"** means the Executive Director appointed by the Board in terms of 5.3;
- 1.2.9. **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act which shall apply not only to Members of Board but also to committees and Prescribed Officers, if any;
- 1.2.10. **"Member"** means a person who is admitted in terms of clause 7.2 to any of the five categories of membership of the Company referred to in clause 7.1, and **"members"** and **"membership"** bear a corresponding meaning;
- 1.2.11. **"MOI"** means this Memorandum of Incorporation;
- 1.2.12. **"Regulations"** means regulations published pursuant to the Companies Act;
- 1.2.13. **"rules"** means the relevant rules made by the Board in terms of clause 8;
- 1.2.14. **"South Africa"** means the Republic of South Africa;
- 1.3. references to Members entitled to vote shall be Members present at a meeting or acting in person and shall include juristic persons represented by duly authorised representative or acting in the manner prescribed in the Companies Act;
- 1.4. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a proxy;
- 1.5. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.9. save to the extent that item 4(4) of Schedule 5 of the Companies Act may permit this MOI to prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

**2. CALCULATION OF BUSINESS DAYS**

- 2.1 When a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by—
- 2.1.1. excluding the day on which the first such event occurs;
  - 2.1.2. including the day on or by which the second event is to occur; and
  - 2.1.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1.1 and 2.1.2 respectively.

**3. INCORPORATION OF THE COMPANY AND REPLACEMENT OF MEMORANDUM OF INCORPORATION**

- 3.1 The Company was incorporated on 12 September 2019 as a Non-Profit Company as defined in the Companies Act, 2008 and at the time it adopted the Short Standard Form for Non-Profit Companies as its Memorandum of Incorporation.
- 3.2 The Company has now drafted a more relevant MOI and this MOI replaces and supersedes the Memorandum of Incorporation of the Company applicable immediately prior to the filing hereof.

**4. OBJECTS OF THE COMPANY**

- 4.1. The object of the Company is to promote the common interests of Corporate Counsel.
- 4.2. Substantially the whole of the activities of the Company must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual member or minority group.
- 4.3. The purpose and powers of the Company are subject to a restriction as contemplated in section 19 (1)(b)(ii) of the Act.
- 4.4. In line with the provisions of clauses 4.1 and 4.2, the objects and respective powers of the company will be limited to the following:
- 4.4.1 To improve and promote the proficiency and competency as Corporate Counsel of its members and to encourage professional and ethical conduct amongst its members;
  - 4.4.2 To provide a forum for the exchange of views and mutual liaison on matters of common interest to Corporate Counsel;
  - 4.4.3 To effect liaison with such representative national and international organisations as may be desirable in the interest of its members;
  - 4.4.4 To consider and, where necessary, deal with and make representations concerning the teaching and practice of law and the administration of justice in general;

- 4.4.5 The Company will not knowingly become a party to, and does not and will not knowingly permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part IIA of Chapter III of the Income Tax Act, 1962, or a transaction, operation or scheme as contemplated in section 103(5) of the said Act.
- 4.4.6 The Company continues as an entity notwithstanding changes in and of its membership;
- 4.4.7 The Company shall not:
  - 4.4.7.1 have a share or other interest in any business, profession or occupation which is carried on by its members.
  - 4.4.7.2 carry on any trading or other profit-making activities, or participate in any business, profession or occupation carried on by any of its members, or provide to any of its members financial assistance, premises, continuous services or facilities for the purpose of carrying on any business, profession or occupation;
- 4.4.8 The company must at all times ensure that it applies all of its assets and income, however derived, to advance its stated objective set out under clause 4.1.

**5. THE EXERCISE OF THE POWERS OF THE COMPANY:**

- 5.1. No single person may directly or indirectly control the decision-making powers relating to the Company.
- 5.2. The management and administration of the Company shall be exercised by the Board, who will be duly appointed and elected by the Members at the annual general meeting referred to under clause 11.1.
- 5.3. The Board will employ an Executive Director on a full or part-time basis to whom the day to day management and administration of the Company, including any of its powers as per clause 4 above, may be delegated.

**6. AMENDMENTS TO THE MOI**

- 6.1 Any amendments of the MOI must be confirmed by way of a special resolution by the Members and effected in accordance with section 16(1) of the Companies Act.
- 6.2 The Company must give notice of any amendment to the MOI made in terms of this clause by sending a copy of the proposed amendment to each member via e-mail not less than 15 (fifteen) days prior to such meeting.
- 6.3 Any amendments to the MOI must be submitted to the Commissioner of SARS within 30 days from the date of the amendment.

## **7. MEMBERS OF THE COMPANY**

### **7.1 CATEGORIES OF MEMBERS**

There shall be four categories of members, namely:

- 7.1.1 ordinary members;
- 7.1.2 associate members;
- 7.1.3 honorary members; and
- 7.1.4 corporate members.

### **7.2 ADMISSION AND QUALIFICATION FOR MEMBERSHIP**

#### **7.2.1 Ordinary membership**

The Board shall, on application for ordinary membership in accordance with the rules, admit and enrol any person as an ordinary member of the Company if it is satisfied that such person:

- 7.2.1.1 is a fit and proper person to be so admitted;
- 7.2.1.2 is 21 (twenty-one) years of age or older;
- 7.2.1.3 is a South African citizen or is ordinarily resident in South Africa;
- 7.2.1.4 actively and bona fide practises as a Corporate Counsel; and
- 7.2.1.5 is or is entitled to be admitted to practise as an advocate or as an attorney in South Africa; or has satisfied all the requirements for the degrees of Baccalaureus Legum, Baccalaureus Procurationis or Baccalaureus Iuris of any university in South Africa, or any degree which, in the opinion of the Board, is equivalent thereto; or by virtue of his training and experience is, in the opinion of the Board, qualified to practise as a Corporate Counsel in South Africa.

#### **7.2.2 Associate membership**

The Board may, on application in accordance with the rules, admit and enrol any person as an associate member of the Company if it is satisfied that such person:

- 7.2.3.1 satisfies the requirements referred to in 7.2.1.1 and 7.2.1.2;
- 7.2.3.2 is ordinarily resident in South Africa or any other country that the Board in its discretion deems appropriate;
- 7.2.3.3 by virtue of his current or past employment has, in the opinion of the Board, a bona fide interest in the Company; and
- 7.2.3.4 by virtue of his membership will, in the opinion of the Board, contribute to the attainment of the objects of the Company;

- 7.2.3.5 provided that no person who qualifies for ordinary membership of the Company in terms of 7.2.1 shall be entitled to be admitted to associate membership.

**7.2.3 Honorary membership**

The Board may, by unanimous resolution of the members of the Board elected in terms of 12.1 who are present at the meeting in question, elect as an honorary member of the Company any person who is not a member of the Company and who has made a significant contribution to the attainment of the objects of the Company.

**7.2.4 Corporate membership**

It shall be permissible to admit juristic persons ("entities") to corporate membership. Such admission shall only be permissible in the event that:

- 7.2.5.1 the entity or any of its subsidiaries employs ten or more Corporate Counsel;
- 7.2.5.2 the entity is, in the opinion of the Board, an organisation of sound reputation committed to ethical business practices.

- 7.3 Upon registration of membership, Members shall be obliged to comply with the provisions of this MOI and the Rules, as amended, from time to time.

**7.4 RIGHTS AND DUTIES OF MEMBERS**

**7.4.1 Ordinary members shall:**

- 7.4.1.1 enjoy the full and unrestricted rights which this MOI may confer, in particular:
- 7.4.1.1.1 the right of audience at any meeting of the Company;
- 7.4.1.1.2 the right to vote at any meeting of the Company, each of whom has an equal vote in any matter to be decided by the Members of the Company;
- 7.4.1.1.3 the right to be elected to any office for which this MOI provides;
- 7.4.1.2 be liable for the payment of any subscription, levy, fee or other charge prescribed by the Board.

**7.4.2 Associate members shall:**

- 7.4.2.1 enjoy the same rights as those to which ordinary members are entitled in terms of 7.4.1.1, with the exception of:
- 7.4.2.1.1 the right to vote;
- 7.4.2.1.2 the right to be elected to any office; and
- 7.4.2.1.3 the right to nominate persons to any office.
- 7.4.2.2 be liable for the payment of any subscription, levy, fee or other charge prescribed by the Board.

**7.4.3 Honorary members** shall:

7.4.3.1 enjoy the same rights as those to which ordinary members are entitled in terms of 7.4.1.1, with the exception of:

7.4.3.1.1 the right of audience at any meeting of the Company, save at the invitation or with the consent of the person presiding;

7.4.3.1.2 the right to vote;

7.4.3.1.3 the right to be elected to any office; and

7.4.3.1.4 the right to nominate persons to any office.

7.4.3.2 not be liable for the payment of any subscription, levy, fee or other charge.

**7.4.4 Corporate members** shall:

7.4.4.1 be entitled to enjoy their membership by way of representatives nominated by the corporate member concerned, which nominated representatives shall be required to meet the criteria for ordinary membership or associate membership of the Company, mutatis mutandis in terms of this MOI and the rules;

7.4.4.2 through their representatives enjoy:

7.4.4.2.1 the right to vote;

7.4.4.2.2 the right to be elected to any office; and

7.4.4.2.3 the right to nominate persons to any office,

7.4.4.3 provided that nothing in this 7.4.4 shall limit the rights of those representatives to enjoy personally the rights of ordinary membership set out in 7.4.1 or associate membership set out in 7.4.2 (as the case may be);

7.4.4.4 be liable for the payment of any subscription, levy, fee or other charge prescribed by the Board.

7.4.4.5 Without derogation from any specific provision of this MOI or of the rules, any representative of a corporate member shall be treated as a member in that category for which he qualifies in terms of 7.2.

**7.5 LIABILITY OF MEMBERS**

7.5.1 The Company holds its assets distinct from its members;

7.5.2 No member has any right, title, claim or interest in or to the assets of the Company by reason of its membership;

7.5.3 No member may directly or indirectly have any personal or private interest in the Company;

7.5.4 No member of the Company shall be liable in any way for the Company's debts or legal obligations;

- 7.5.5 No member of the Board or sub-committee, whether an office bearer or not, shall be liable for anything done or omitted to be done by him in carrying out his office or related directly or indirectly to that office, provided that nothing herein shall exclude any person from liability for his wilful or fraudulent act.

#### **7.6 TERMINATION OF MEMBERSHIP**

##### **7.6.1. Membership shall terminate upon:**

- 7.6.1.1. death;
- 7.6.1.2. resignation, disqualification or expulsion in accordance with this Mol or the provisions of the Companies Act and/or any Rules;
- 7.6.1.3. should any subscription, fee or other charge upon a member by the Company remain unpaid after the expiry of 2 (two) months from the date upon which such subscription, fee or other charge fell due, or from such extended date as the Board may, in its sole discretion, have allowed;
- 7.6.1.4. in the case of corporate membership, on the granting of any provisional or final order of winding-up of the entity or in the event that the Board, having regard to all the circumstances relating to the entity at any time, is of the opinion that the entity would not be entitled to admission to corporate membership upon a fresh application.

#### **8. THE MAKING OF RULES**

- 8.1 The authority of the Board to make Rules for the Company is not limited or restricted in any manner by this MOI.
- 8.2 The Rules, may be altered or amended in the manner set out in section 16, 17 or 152 (6) (b) of the Companies Act.
- 8.3 The Company must give notice of any amendment to the Rules made in terms of this clause by delivering a copy to each Member, by e-mail.

#### **9. COMPANY SECRETARY AND AUDIT COMMITTEE**

The Company does not elect to comply voluntarily with the provisions of Chapter 3 of the Act, in relation to the appointment of a Company Secretary and Audit Committee.

#### **10. COMPANY RECORDS**

- 10.1. The Company shall maintain a register of its Members.
- 10.2. The Company shall maintain the necessary Accounting Records and Financial Statements which shall be accessible from its Registered Office or other such place as decided on by the Members at the annual general meeting.



- 10.3. The Chairman of the Board shall cause to be laid before the Company at the annual general meeting independently reviewed annual financial statements and its books of accounts, balance sheets and reports of the Company, validated and approved by an independent person, body or institution registered as an accountant, auditor or bookkeeper.
- 10.4. Any Member, on reasonable notice, will have the right to inspect (at no charge) and take copies (at a reasonable charge) of:
- 10.4.1. the MOI;
  - 10.4.2. amendments to the MOI;
  - 10.4.3. Member register, subject to any member's rights to privacy as per the provisions of the Promotion of Access to Personal Information Act, 12 of 2013;
  - 10.4.4. records in respect of the Board; and
  - 10.4.5. accounting records required to be maintained by the Company;
- 10.5. The Company shall notify the Members of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements.

## **11. MEETINGS OF MEMBERS OF THE COMPANY**

### **11.1 Annual General Meeting**

Annual general meetings of Members shall be held once in every year at such time and place as the Members may agree, but so that no more than 15 (fifteen) months shall be allowed to lapse between any two such successive meetings. The business to be done at the annual general meeting shall include:

- 11.1.1 the adoption of the minutes of the previous annual general meeting;
- 11.1.2 the receipt of a report on the affairs of the Company;
- 11.1.3 the adoption of the annual financial statements, balance sheet and accounts;
- 11.1.4 the election or re-election of the Board;
- 11.1.5 the election or re-election of a Chairman;
- 11.1.6 the consideration of any resolutions concerning the affairs of the Company of which due notice has been given to all Members;
- 11.1.7 agreement on the budget for the forthcoming year;
- 11.1.8 any other business.

### **11.2 Ordinary General Meetings**

- 11.2.1 An ordinary general meeting will be held as and when required during any given annual period.

11.2.2 All Members will be entitled to attend and vote at any such meeting, either in person or through a duly elected proxy.

11.2.3 The Board will be obliged to call and convene a general meeting if 20% (twenty percent) of the Members request, in writing, a general meeting.

### **11.3 Location of Meetings**

All ordinary general meeting will be held at the venue to be decided upon by the Board. The details of the venue for the meeting will be clearly set out in the notice of the meeting.

### **11.4 Electronic Communication**

The Company shall have the right to conduct any meeting by electronic communication, or provide for participation in a meeting by electronic communication, as set out in Section 63 of the Act.

### **11.5 Notice of Meetings**

11.5.1 An annual general meeting shall be convened on not less than 21 (twenty one) days' notice, in writing.

11.5.2 An ordinary meeting shall be called by not less than 14 (fourteen) days' notice, in writing.

11.5.3 Notice of any general or ordinary meeting of the Company shall be sent via e-mail to all members. The notice shall specify the place, the day and the hour of the meeting and the general nature of the matters to be discussed, provided that any meeting shall, notwithstanding that it is called by shorter notice than that specified, be deemed to have been correctly called if it is so agreed by all the Members present at the meeting.

### **11.6 Validity of Meeting**

Where there has been a defect in the giving of the notice of the meeting, the meeting may proceed if the persons who are entitled to vote in respect of each item on the agenda are present at the meeting, and acknowledge actual receipt of the notice, and agree to waive notice of the meeting or in the case of a material defect, ratify the defective notice. A Member who is present at a meeting is deemed to have received or waived notice of the meeting.

### **11.7 Chairing of Meetings**

11.7.1 The Chairman of the Company, or in his absence the Vice-Chairman, shall preside at all meetings of the Company and of the Board. If both the Chairman and the Vice-Chairman are not present, the meeting shall elect a presiding officer from among the ordinary members present who shall preside at the meeting.

11.7.2 The Chairman of the meeting shall keep or cause to be kept, minutes of the meeting.

## 11.8 Quorum

- 11.8.1 A meeting may not begin until sufficient members are present at the meeting to exercise, either in person or by way of proxy, in aggregate, at least 10 (ten) percent of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting and a matter to be decided at the meeting may not begin to be considered unless sufficient members, either in person or by way of proxy, are present at the meeting to exercise, in aggregate, at least 10 (ten) percent of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.

## 11.9 Adjournment

If within an hour of the time appointed for the holding of a meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place and if at such adjourned meeting a quorum is not present within an hour from the time appointed for holding the meeting, the Members present shall be a quorum, provided that no business may be transacted other than the business which was on the agenda of the meeting at which the adjournment took place. All Members of the Company shall be forwarded notice of such adjourned meeting

## 11.10 Votes

At all general meetings, resolutions put to the vote shall take place by a show of hands. Voting shall take place in accordance with the following positions:

- 11.10.1 Votes may be given either personally or by proxy.
- 11.10.2 Subject to the provisions of clause 7.4 above, each Member present in person shall have one vote;
- 11.10.3 each person present as proxy for a Member shall have one vote for every Member for whom he is a proxy;
- 11.10.4 each Member and person present as proxy for a Member shall indicate clearly how he casts each vote to which he is entitled as aforesaid;
- 11.10.5 all resolution/s shall, except as otherwise provided herein, or under the Companies Act, be by simple majority by those Members present in person or proxy at the meeting and voting;
- 11.10.6 the Chairman of the meeting shall count the votes cast for and against the resolution and shall declare it carried or lost as the case may be;
- 11.10.7 a declaration by the Chairman of a result of the voting by show of hands and an entry thereof in the minute book shall be conclusive evidence of that vote;
- 11.10.8 In the event of an equality of votes on any matter before a meeting of the Board or the Company, the person presiding at such meeting shall have a casting vote in addition to his deliberative vote.

**11.11 Proxy**

- 11.11.1 Subject to the provisions of clause 7.4, any member may, in writing, designate any other Member to act as his proxy at any meeting of the Company.
- 11.11.2 The instrument appointing a proxy shall be in writing in the common form, or any form approved by the Chairman of the Meeting.

**11.12 Ordinary and Special Resolutions**

- 11.12.1 Subject to the provisions of clause 7.4, for an ordinary resolution to be adopted at any meeting attended by a Member, it must be supported by at least 50% (fifty percent) of the Members voting on the resolution.
- 11.12.2 Subject to the provisions of clause 7.4, for a special resolution to be adopted at any meeting attended by a Member, it must be supported by at least 75% (seventy five percent) of the Members voting on the special resolution.
- 11.12.3 Save for the matters set out in clause 11.12.4, any decision which is required to be supported by the Members will be by way of a general resolution.
- 11.12.4 The matters set out below specifically require the support of the Members by way of a special resolution adopted at a properly convened Members meeting:
- 11.12.4.1 amendment of the Company's MOI to the extent required by Section 16 (1) (c) of the Act;
- 11.12.4.2 ratification of a consolidated version of the Company's MOI as contemplated by Section 18 (1) (b) of the Act;
- 11.12.4.3 ratification of actions by the Company or Board in excess of their authority, as contemplated in Section 20 (2) of the Act;
- 11.12.4.4 approval of the winding up of the Company in the circumstances as contemplated in Section 80 (1) and 81 (1) of the Act.

**12. NOMINATION AND ELECTION OF MEMBERS OF THE BOARD AND CHAIRMAN**

- 12.1. The management of the Company shall be vested in the Board of the Company, consisting of:
- 12.1.1 a Chairman;
- 12.1.2 a Vice-Chairman;
- 12.1.3 the Executive Director;
- 12.1.4 at least 3 (three) ordinary members of the Company.

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- 12.2. The minimum number of persons comprising the Board shall be 5 (five) members of the Company, who are not connected persons in relation to each other. However, the Company may, in its sole discretion, elect to increase the number of persons that shall comprise the Board. Any failure by the Company at any time to have the minimum number of Board Members, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.
- 12.3. The members of the Board referred to in 12.1.1, 12.1.2 and 12.1.4 will be elected annually by the Members at the annual general meeting.
- 12.4. The Chairman of the Board will be elected annually by the members of the Board at the first meeting of the members of the Board.
- 12.5. Nominations in respect of the members of the Board shall be:
- 12.5.1 submitted in writing by any ordinary member to the Chairman or the secretary not more than 3 (three) weeks before the annual general meeting; or
- 12.5.2 made by any ordinary member from the floor at the annual general meeting.
- 12.6. The election of the Members of the Board will be conducted as follows:
- 12.6.1 a series of votes of those entitled to exercise votes regarding such election, 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
- 12.6.2 in each vote to fill a vacancy:
- 12.6.2.1 each voting right entitled to be exercised may be exercised once; and
- 12.6.2.2 the vacancy is filled only if a majority of the voting rights exercised support the candidate.
- 12.7. No person shall be elected to Board, if he is Ineligible or Disqualified as per the provisions of Section 69 of the Companies Act and any such election shall be a nullity. A person who is Ineligible or Disqualified must not consent to be elected. A person placed under probation by a court must not serve unless the order of court so permits.
- 12.8. The term of appointment for each Member of the Board shall not exceed 7 (seven) years.
- 12.9. The incoming Board shall take office immediately after the closure of the annual general meeting and shall serve until the next annual general meeting is closed, or until its successor Board takes office.
- 12.10. Any ordinary member shall be eligible for election to any office on the Board provided he has consented, orally at the meeting during which the election is to take place or previously in writing, to serve in such office if elected.
- 12.11. The Chairman, whether elected in terms of 12.4 or in terms of 12.16.1, shall not be eligible for re-election to that office for more than a further two successive terms.

- 12.12. The occurrence of vacancies on the Board caused by departure of any member elected in terms of 12.3 or 12.4 or that member's successor, shall be dealt with as follows:
- 12.13.1 should a vacancy occur in the office of Chairman or Vice-Chairman, the Board shall elect a replacement to such office from among its own members who have been elected in terms of 12.3;
- 12.13.2 should any vacancy occur among the members elected in terms of 12.3, the Board shall (unless the vacancy occurs less than three months before the scheduled date of the annual general meeting, in which case the Board may) co-opt an ordinary member to the Board.
- 12.14. In the event of the number of Members comprising the Board falling below 3 (three), the vacancy on the Board must be filled within 3 (three) months of any such vacancy occurring.
- 12.15. The members of the Board who have been elected in terms of 12.3 and 12.13 shall be entitled to co-opt specialist Board members from amongst the Associate and Honorary members of the Company from time to time in order to ensure that the specific and non-legal interests of the members of the Company are represented, provided that such co-opted Board member shall not have a vote.
- 12.16. Members of the Board who are appointed by co-option as envisaged in 12.15 shall serve in such office until the next annual general meeting is closed.
- 12.17. Members of the Board who are appointed as envisaged in 12.3 and 12.13 shall serve in such office until their successors take office.

### **13. CESSATION OF OFFICE AS MEMBER OF THE BOARD**

A Member of the Board shall cease to hold office as such –

- 13.1. immediately he becomes Ineligible or Disqualified or the Board resolves to remove him on such basis, and in the latter case the individual has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);
- 13.2. when his term of office contemplated in clause 12.8 above expires;
- 13.3. when he dies;
- 13.4. when he resigns as Member or Member of the Board by written notice to the Company;
- 13.5. if there are more than 5 (five) Members of the Board in office and if the Board determines that he has become incapacitated to the extent that the person is unable to perform the functions of a Board Member, and is unlikely to regain that capacity within a reasonable time, and the Member of the Board has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);
- 13.6. if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Member of the Board of the Company;

- 13.7. if he is removed by ordinary resolution;
- 13.8. if there are more than 5 (five) Board Members in office and if he is removed by resolution of the Board for being negligent or derelict in performing his functions as Board Member, and has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period she/he shall be suspended);
- 13.9. he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally.
- 13.10. Every member of the Board shall transmit all the records of his office to his successor or to the president upon vacating office.

#### 14. **BOARD MEETINGS**

- 14.1. The Board shall meet not less than once during each calendar quarter.
- 14.2. Meetings of the Board shall be convened by the president:
  - 14.2.1 in his discretion, or
  - 14.2.2 if any four members of the Board request such a meeting in writing.
- 14.3. The Board may determine what period of notice shall be given of meetings of the Board and may determine the means of giving such notice which may include telephone or email. It shall be necessary to give notice of a meeting of the Board to all Board Members.
- 14.4. If all of the Board Members:
  - 14.4.1 acknowledge actual receipt of the notice;
  - 14.4.2 are present at a meeting of the Board; or
  - 14.4.3 waive notice of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 14.5. The Board Members may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 14.6. Unless otherwise resolved by the Board Members, all their meetings shall be held at a venue to be confirmed in the notice of the meeting.
- 14.7. One third of the members of the Board shall constitute a quorum at any of its meetings, provided that the provisions of 11.9 shall, mutatis mutandis, apply in the event of the absence of a quorum.

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- 14.8. If at any meeting the Chairman is not present within 15 (fifteen) minutes after the time appointed for holding it, the Board Members present may choose one of their number to be chairperson of the meeting.
- 14.9. Subject to the provisions of 12.15 in terms of voting rights, each Board Member has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 14.10. In the case of a tied vote, the chairperson of the meeting may cast a deciding vote.
- 14.11. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes:
- 14.11.1 any personal financial interest declaration given by notice or made by a Member of the Board as required by Section 75 of the Companies Act;
- 14.11.2 every resolution adopted by the Board.
- 14.12. Resolutions adopted by the Board:
- 14.12.1 must be dated and sequentially numbered; and
- 14.12.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 14.13. Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 14.14. A round robin resolution of Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, provided that each Board Member has received notice of the matter to be decided. For the purposes hereof a round robin resolution means a resolution passed other than at a meeting of Board, in respect of which a majority of the Board Members voted in favour by signing in writing a resolution in counterparts, within 20 (twenty) business days after the resolution was submitted to them.

## 15. THE DUTIES AND POWERS OF THE BOARD

- 15.1 Without derogation from the general powers of management vested in the Board by this MOI the Board shall:
- 15.1.1. take such steps as may be deemed necessary or expedient to promote and implement the objects of the Company, including the regulation of the professional and ethical conduct of the Members of the Company;
- 15.1.2. open an account (or accounts) at a registered commercial bank on behalf of the Company, and operate the banking account with all powers required by such operations;
- 15.1.3. deposit all money received by the Company with a banking institution;
- 15.1.4. administer the assets of the Company;



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- 15.1.5. keep proper accounts of the revenue and expenditure and of the assets and liabilities of the Company;
  - 15.1.6. appoint auditors who shall be responsible for the audit of the books of the Company each year ended 31 December or any other date for the financial year end which the Board may resolve;
  - 15.1.7. determine the date and place of the meetings of the Company and the business to be transacted at such meetings;
  - 15.1.8. convene the annual general meeting and, in the prescribed circumstances, the special meetings as provided for herein;
  - 15.1.9. report on its activities and the affairs of the Company at the annual general meeting of the Company;
  - 15.1.10. employ an executive director (whether a member or not) on a full or part-time basis on behalf of the Company to whom the Board may delegate any of its powers, it being recorded that the payment of a market related remuneration to any such person shall not be regarded as contrary to the provisions of clauses 15.2.15 and 16;
  - 15.1.11. levy and collect annual membership subscription fees from Members as provided in clause 7.4;
  - 15.1.12. without derogation from its power to make any other rules, make rules providing for:
    - 15.1.12.1 the manner in which applications for membership of the Company as envisaged in 7.2 shall be made;
    - 15.1.12.2 the termination of membership by resignation, disqualification or expulsion as envisaged in 7.6;
    - 15.1.12.3 the procedure at meetings of the Company and the manner in which motions shall be submitted to such meetings.
  - 15.1.13 receive and consider applications for membership and complaints concerning the conduct of members of the Company and take suitable action;
  - 15.1.14 to deal in general with all matters concerning the Company or any of its members.
- 15.2. The Board may:
- 15.2.1 consider appropriate representations concerning proposed legislation and the administration of justice in general and make such submissions to government institutions as may be in the interest of its members;
  - 15.2.2 express its opinion as the representative mouthpiece of the Company on such matters and in such quarters as may be desirable;
  - 15.2.3 determine the subscriptions payable to the Company by its members and, in so doing, differentiate between the different categories of membership envisaged in 7.1;

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- 15.2.4 appoint sub-committees from the members of the Board or of the Company and delegate any of its powers to such sub-committees as it may decide;
  - 15.2.5 determine the manner in which the Board shall conduct its business;
  - 15.2.6 make, amend and repeal Rules regulating the conduct of its members which shall be binding upon Members of the Company;
  - 15.2.7 invest and re-invest monies of the company not immediately required in such manner as may from time to time be determined;
  - 15.2.8 conclude of service level agreements with various service providers who are required to provide services to the Company;
  - 15.2.9 form a Company or federation with any other organisation which it deems beneficial to its members, on such terms and conditions as it may in its discretion deem fit;
  - 15.2.10 offer the right to nominate a Board member to an organisation with which it has become associated or federated;
  - 15.2.11 do anything which is required for the proper and effective carrying out of its duties, the performance of its functions or the exercise of its powers or, in appropriate cases, omit to do anything;
  - 15.2.12 incur expenditure in furtherance of the objects of the Company, and take action in all matters on behalf of the Company;
  - 15.2.13 obtain and utilise overdraft and/or other borrowing facilities on behalf of the Company;
  - 15.2.14 pay any person allowances to cover expenses reasonably incurred by such person in connection with his performance of any act at the request or under the direction of the Board, on behalf of or for the benefit of the Company;
  - 15.2.15 appoint contractors of services or full or part-time employees on behalf of the Company (whether a member or not), including any executive director or secretary, to any of whom the Board may delegate any of its powers, it being recorded that no remuneration will be paid to any employee, office bearer or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered. Payment of such fee shall not be regarded as contrary to the provisions of clauses 15.1.10 or 16;
  - 15.2.16 issue certificates to its members to the effect that such member has qualified for, and been admitted to, a specific category of membership in terms of 7.1;
  - 15.2.17 issue certificates to non-members to the effect that such non-member qualifies for a specific category of membership in terms of 7.1, or exercise any other functions expressly or impliedly required of it by any legislative enactment;
  - 15.2.18 make available to any member requesting it, a list of current members;

15.2.19 do anything which is required for the proper and effective carrying out of its duties, the performance of its functions or the exercise of its powers or, in appropriate cases, omit to do anything, as may generally be determined by the Board.

15.3. Decisions of the Board shall wherever possible be obtained by consensus. However, any member of the Board shall be entitled to request that a vote be obtained on any matter. In such case, the matter shall be put to the vote, which shall be passed by a simple majority, provided that the majority of members of the Board elected in terms of 12.1.1, 12.1.2 and 12.2.4 or their successors in terms of 12.13 present at the meeting in question do not vote against the motion.

15.4. Notwithstanding any other provision of this MOI:

15.4.1 the members of the Board may remove from office or from the Board any member of the Board whom the remaining members of the Board unanimously resolve has become unfit for office;

15.4.2 the members may at any meeting of the Company duly convened remove from office or from the Board any member of the Board, provided that notice has been given of the proposed expulsion or removal together with notice of the particular meeting and provided further that the relevant resolution is carried by a vote of not less than 75% (seventy-five percent) of the ordinary members present or duly represented by proxy.

## 16. REMUNERATION OF MEMBERS OF BOARD AND COMMITTEES

16.1. Save for the Executive Director, who will be paid a monthly fee as determined by the Members of the Board and which is set out in the Company's budget, no Member of the Board or any committees which may be convened, shall be entitled to any remuneration for their services.

16.2. Where any Member of the Board incurs any expenses on behalf of the Company it shall obtain prior written approval from the Board in respect of such expense. The Member incurring such an expense, following approval, will be entitled to be reimbursed in respect thereof provided it provides support vouchers to the Executive Director within a month of incurring such expenses.

## 17. FINANCIAL ASSISTANCE

Under no circumstances may the Company grant financial assistance to any person.

## 18. ARBITRATION

18.1 Should any dispute arise in terms of this MOI or out of its termination or cancellation or arise between any member and the Company, then the matter shall (save as is provided for in terms of any rules made in terms of clause 8 above) be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa.

18.2 No party to the arbitration shall be entitled to any external legal representation. In the case of a member or ex-member, he shall be entitled to be represented by any other member.

18.3 No provision in this arbitration clause shall be taken as prohibiting the rights of the Company or any member to approach the appropriate court for the purposes of any interim or interdictory relief.

18.4 Without derogation from the meaning of the word "dispute", which word shall be interpreted widely, it shall be regarded as a dispute for the purposes of this clause if one party addresses any notice in terms of this MOI or dealing with any matter related, directly or indirectly, to this MOI, which notice calls either for remedy of any action or lack of action or for a response to that notice and, after the lapse of time specified in this MOI for remedy or response (or, in the absence of any such specified time, a period of 7 (seven) days from the date of receipt of the notice), the party which gave the notice alleges that no or inadequate remedy has occurred or that no or inadequate response has been received.

## 19. **WINDING UP AND LIQUIDATION**

19.1 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company:

19.1.1 no past or present Member shall be entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied;

19.1.2 the remaining assets after satisfaction of its liabilities must be transferred to another entity with similar objects which is approved in terms of sections 10(1)(d)(iii) or (iv) of the Income Tax Act, 1962, or a public benefit organization in terms of Section 30 of the Income Tax Act, 1962, or any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10(1)(a) or (b) of the Income Tax Act, 1962 which is required to use those assets solely for purposes of carrying on one or more public benefit activities, or an institution, Board or body approved in terms of section 10(1)(cA)(i) of the Income Tax Act, 1962.