

This is the Memorandum of Incorporation tabled and adopted by way of a special resolution in accordance with section 16(1)(c) of the Companies Act, 2008 at the general meeting of the Company held on _____ 2019, initialled by the Company Secretary / Chairperson for purposes of identification.

Company Secretary / Chairperson

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
REPUBLIC OF SOUTH AFRICA
MEMORANDUM OF INCORPORATION
of
THE BANKING ASSOCIATION SOUTH AFRICA NPC
(Registration number 1992/001350/08)
being a non-profit company
("the Company")

The Company has adopted this unique form of Memorandum of Incorporation and, accordingly, the standard form of Memorandum of Incorporation for Non-Profit Companies with Members as contained in the Companies Regulations shall not apply to the Company.

This Memorandum of Incorporation replaces the Memorandum of Association and Article of Association of the Company that was in existence at the time of adoption of this Memorandum of Incorporation.

PART A – THE Moi AND RULES

1. INTERPRETATION

In this Memorandum of Incorporation, clause headings are used for convenience and reference purposes only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention –

1.1. an expression that denotes –

1.1.1. any gender includes the other genders;

1.1.2. a natural person, includes an artificial or juristic person and *vice versa*; and

1.1.3. the singular, includes the plural and *vice versa*;

1.2. the following words and expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings, -

1.2.1. **"Act"** means the *Companies Act, No. 71 of 2008*;

1.2.2. **"Bank"** means a public company registered as a bank in terms of the Banks Act;

1.2.3. **"Banks Act"** means the Banks Act, No. 94 of 1990;

1.2.4. **"Board"** means the Board of Directors of the Company from time to time;

1.2.5. **"Branch"** means an institution that is not a public company as contemplated in section 11(1) of the Banks Act, but by means of which a foreign institution conducts the business of a bank in the Republic under an authorisation referred to in section 18A of the Banks Act;

1.2.6. **"Business Day"** has the meaning determined in accordance with section 5(3) of the Act;

1.2.7. **"Category 1 Member"** includes -

1.2.7.1. an Excluded Financial Institution;

1.2.7.2. a Representative Office; and

1.2.7.3. a Member whose **South African Held Assets** are up to and including 0.25% (a quarter per cent) of the aggregate of all **Members'** South African Held Assets;

1.2.8. **"Category 2 Member"** means a Member whose **South African Held Assets** are more than 0.25% (a quarter per cent) and up to and including 10% (ten per cent) of the aggregate of all **Members'** South African Held Assets;

1.2.9. **"Category 3 Member"** means a Member whose **South African Held Assets** are more than 10% (ten per cent) of the aggregate of all **Members'** South African Held Assets;

1.2.10. **"Chairperson"** means the chairperson of the Board from time to time;

1.2.11. **"Company"** means the company named on the first page of this Memorandum of Incorporation, duly incorporated under the registration number endorsed thereon, or by whatever name it may be known from time to time;

- 1.2.12. **"Company Secretary"** means any person duly appointed to perform the duties of the secretary of the Company from time to time;
- 1.2.13. **"Contribution"** means the fees payable by Members in accordance with clause 14;
- 1.2.14. **"Days"** shall be construed as calendar Days unless qualified by the word as Business Days;
- 1.2.15. **"Director"** means a member of the Board as contemplated in section 66 of the Act, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.2.16. **"Effective Date"** means the date on and time at which the replacement of the existing Memorandum of Association and Articles of Association of the Company by way of substitution with this Memorandum of Incorporation takes effect in terms of the Act;
- 1.2.17. **"Electronic Address"** means in regard to Electronic Communication, any e-mail address furnished to the Company by a Member, a Director or an Alternate Director;
- 1.2.18. **"Electronic Communication"** means an electronic communication as defined in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.2.19. **"Excluded Financial Institutions"** means those institutions which have been excluded from the application of the Banks Act and are listed and designated under section 2 of the Banks Act;
- 1.2.20. **"Income Tax Act"** means the Income Tax Act, No 58 of 1962;
- 1.2.21. **"Managing Director"** means the person appointed by the Board to act as managing director of the Company in terms of clause 32.1;
- 1.2.22. **"Members"** means the members of the Company from time to time and include–
- 1.2.22.1. Banks
 - 1.2.22.2. Branches;
 - 1.2.22.3. Representative Offices; and
 - 1.2.22.4. Excluded Financial Institutions;
- 1.2.23. **"Memorandum of Incorporation"** or **"MoI"** means the memorandum of incorporation of the Company, being this document (and including any Schedules hereto), as amended or replaced from time to time;
- 1.2.24. **"Month"** means a calendar month;
- 1.2.25. **"Ombudsman for Banking Services"** means the Ombudsman for Banking Services NPC (reg. no.2000/002577/08), a non-profit company duly registered under the laws of the Republic of South Africa;
- 1.2.26. **"Person"** includes any company incorporated or registered as such under any law, any other juristic person and anybody of persons corporate or incorporate;

- 1.2.27. **“Registered Office”** means the registered office of the Company as required by the Act;
- 1.2.28. **“Representative Office”** has the meaning assigned to it in section 1 of the Banks Act;
- 1.2.29. **“Regulations”** means the regulations published in terms of the Act from time to time;
- 1.2.30. **“Republic”** means the Republic of South Africa;
- 1.2.31. **“South African Held Assets”** means the aggregate Rand value of assets in South Africa, as set out in the South African Reserve Bank (**“SARB”**) BA 900 economic returns as at 30 June of the preceding year;
- 1.2.32. **“writing”** means legible writing and includes printing, typewriting, lithography or any other mechanical process, as well as Electronic Communication, but as regards any Member, only to the extent that such Member has notified the Company in writing of an Electronic Address which it has chosen for this purpose;
- 1.2.33. **“Year”** means a calendar year, from 01 January to 31 December;
- 1.3. if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person, then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this MoI;
- 1.4. the use of the word **“including”, “includes”** and **“include”**, followed by a specific example(s), shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example(s);
- 1.5. any capitalised word or expression used in this MoI that is defined in the Act and that is not otherwise defined in this MoI shall have the meaning assigned to it in the Act.
- 1.6. for the avoidance of doubt, it is recorded that any reference to **“Present at such Meeting”** or **“Present at the Meeting”** shall be construed in accordance with the definition of **“Present at a Meeting”** in the Act;
- 1.7. a reference to a **“section”** refers to the corresponding section of the Act;
- 1.8. references to Members represented by proxy shall include Members entitled to vote represented by a duly authorised person;
- 1.9. references to Members entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by duly authorised representative/s or acting in the manner prescribed in the Act;
- 1.10. if any term is defined within the context of any particular clause in this 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;
- 1.11. 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;

- 1.12. any reference to an enactment is to that enactment as at the date on which this MoI is adopted and as amended, re-enacted or replaced from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the date on which this MoI is adopted. If as a result of an amendment or re-enactment that section number changes the relevant provision of this MoI shall be read as if it referred to the correct section, without the necessity for an actual amendment;
- 1.13. if the provisions of this MoI are in any way inconsistent with the provisions of the Act, the provisions of the Act shall prevail, and this MoI shall be read in all respects subject to the Act;
- 1.14. to the extent that any provisions of this MoI are based on any Unalterable Provisions or mandatory provisions of the Act or the Regulations and any of those provisions is amended in such a way that the provisions of this MoI would contravene the Act or the Regulations, the Board is authorised to amend this MoI to reflect such amendments, in addition to its rights to amend the MoI in terms of section 17 and in so doing eliminate the risk that if there is a conflict between any provision of this MoI and the Unalterable Provisions or mandatory provisions of the Act or the Regulations as amended, the relevant provision of this MoI will be void to the extent that it contravenes, or is inconsistent with the amended Unalterable Provisions or mandatory provisions of the Act or the Regulations, as the case may be; and
- 1.15. where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

2. CONFLICTS WITH THE MEMORANDUM OF INCORPORATION

In accordance with the Act, in any instance where there is a conflict between a provision (be it express or tacit) of this MoI and –

- 2.1. an Alterable Provision or elective provision of the Act, the provision of this MoI shall prevail to the extent of the conflict, provided that such Alterable Provision or elective provision of the Act expressly allows for the Company to adopt the conflicting provision; or
- 2.2. an Unalterable Provision or non-elective provision of the Act, the Unalterable Provision or non-elective provision of the Act shall prevail to the extent of the conflict.

3. AMENDMENTS TO THE MEMORANDUM OF INCORPORATION

- 3.1. This MoI may be altered or amended only in the manner set out in the Act, and is not capable of amendment by any other method.
- 3.2. The Company shall be required to submit a copy of any resolution amending this MoI to the South African Revenue Services together with a certificate signed by a duly authorised Director confirming that the resolution complies with this MoI and all relevant laws, in accordance with the requirements of the Income Tax Act.

4. RULES

- 4.1. The Board may, subject to section 15(4) of the Act, make, amend or repeal any necessary or incidental Rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this MoI, and the authority of the Board in this regard is not limited or restricted in any manner by this MoI.
- 4.2. The Company shall publish a copy of those Rules and a notice of any alteration to those Rules in accordance with sections 15(3) and 17(1) of the Act by delivering a copy thereof to each

Member in accordance with clause 39 or in such other manner as may be required by those Rules.

PART B – STATUS AND POWERS OF THE COMPANY

5. STATUS AS NON-PROFIT COMPANY

- 5.1. The Company is a pre-existing company as defined in the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Memorandum of Incorporation replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the Effective Date.
- 5.2. The Company is incorporated in accordance with, and governed by –
 - 5.2.1. the Unalterable Provisions of the Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this Mol);
 - 5.2.2. the Alterable Provisions of the Act, subject to the limitations, restrictions, qualification, extension or other alterations set out in this Mol; and
 - 5.2.3. the other provisions of this Mol and the Rules made under clause 4, if any.
- 5.3. The Company is a non-profit company, and accordingly, the Company
 - 5.3.1. must apply all of its assets and income, however derived, to advance its stated objects provided for in this Mol;
 - 5.3.2. subject to clause 5.3.1, may directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 5.4. The Company, as a non-profit company, must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless as to how the income or asset was derived, to any person who is or was an Incorporator of the Company, or who is a Member or Director, or person appointing a Director of the Company, except –
 - 5.4.1. as reasonable –
 - 5.4.1.1. remuneration for goods delivered or services rendered to, or at the direction of the Company; or
 - 5.4.1.2. payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - 5.4.2. as payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;
 - 5.4.3. as payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
 - 5.4.4. in respect of any legal obligation binding on the Company.

5.5. Winding-up

- 5.5.1. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company –
 - 5.5.1.1. no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
 - 5.5.1.2. the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to the Company's main object, as determined –
 - 5.5.1.2.1. in terms of this MoI; or
 - 5.5.1.2.2. by the Members or Directors, at or immediately before the time of its dissolution; or
 - 5.5.1.2.3. by the court, if no such determination is made in this MoI or by the Members or Directors.

5.6. Fundamental transactions

- 5.6.1. The Company may not –
 - 5.6.1.1. amalgamate or merge with, or convert to, a profit company; or
 - 5.6.1.2. dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- 5.6.2. Any proposal by the Company to –
 - 5.6.2.1. dispose of all or the greater part of its assets or undertaking; or
 - 5.6.2.2. amalgamate or merge with another non-profit company,
must be submitted to the Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Act, respectively.
- 5.7. Sections 115 and 116 of the Act, read with the changes required by the context, shall apply in respect of the approval of a proposal contemplated in clause 5.6.2.

6. POWERS OF THE COMPANY

- 6.1. Except to the extent of any contrary provision in this MoI, the Company has all of the legal powers and capacity of an individual for purposes of carrying out its object, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity, and no provision contained in this MoI should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

6.2. The objects of the Company, except to the extent necessarily implied by the stated objects, the business and powers of the Company, are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.

6.3. The Company is not subject to any restrictive conditions contemplated in section 15(2)(b) or (c) of the Act.

7. LIMITATION OF LIABILITY

No Person shall, solely by reason of being an Incorporator, Member or Director of the Company, be liable for any liabilities or obligations of the Company.

8. ELECTIONS IN RESPECT OF AUDIT

8.1. The Company elects, in terms of section 30(2)(b)(ii)(aa) of the Act, to voluntarily require an audit of its annual or other Financial Statements.

8.2. The Company shall not be required, in terms of section 34(2) of the Act, to comply with the provisions of Chapter 3 of the Act.

PART C: MAIN OBJECT AND BUSINESS OF THE COMPANY

9. MAIN OBJECT OF THE COMPANY

9.1. The main object of the Company is to promote the interests of the banking industry of South Africa and the Members collectively.

9.2. The income and property of the Company whomsoever derived shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise howsoever, to the Members: Provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any Member thereof in return for any services actually rendered to or on behalf of the Company.

10. BUSINESS OF THE COMPANY

In support of the main object of the Company, the business of the Company is to-

10.1. sponsor, oppose, support, procure amendment of, or make representations in regard to legislation calculated to affect Members directly or indirectly, or to procure amendment thereof, or to make any representations in regard to the desirability or otherwise of such legislation;

10.2. represent Members in discussions and negotiations with any other person or corporate entity, whether public or private and in particular the Minister of Finance, National Treasury, the Prudential Authority, the Financial Sector Conduct Authority, the Commissioner for Inland Revenue, the Governor of the Reserve Bank, officials of the Department of Finance, officials of the Department of Trade and Industry, parastatal organisations, any departments of central, regional or provincial government and any other regulator, authority, association or person, whether within the Republic or elsewhere;

10.3. become a member of, or to support, promote, manage/administer, join or enter into any associations or organisations which the Company may consider advantageous or desirable; and

10.4. institute or defend any legal proceedings in respect of any cause or matter affecting the Company or the Members or to contribute the costs incurred by any person in litigation of importance to the Members.

11. EXCLUSIONS

The Company will not carry on profit making activities, or participate in any business, profession or occupation carried on by any of its Members, or provide, any financial assistance, premises, continuous services or facilities to its Members for the purposes of the carrying on of any business, profession or occupation by them.

12. FINANCIAL YEAR END

The financial year end of the Company will be 31 December each year.

PART D: MEMBERS

13. MEMBERS OF THE COMPANY AND MEMBERS' OBLIGATIONS

13.1. Membership

13.1.1. To become a Member of the Company an applicant must –

13.1.1.1. be a Bank, Branch, Representative Office or an Excluded Financial Institution;

13.1.1.2. complete and lodge a Membership application;

13.1.1.3. pay any Contribution that may be required under clause 14;

13.1.1.4. ensure that all information provided when applying for Membership is true and accurate and is not misleading or deceptive;

13.1.1.5. satisfy such other Membership criteria as the Board may determine from time to time; and

13.1.1.6. be admitted into Membership by resolution of the Board.

13.1.2. Membership of the Company shall commence on the date of entry of the Member's name in the Company's register of Members as contemplated in clause 13.3 below.

13.1.3. Members are entitled to exercise voting rights at meetings of the Members and are obliged to make Contributions as provided for in this MoI.

13.2. Resignation

A Member may resign by giving to the Managing Director not less than 3 (three) Month's prior written notice to be effective from the first Day of a Month.

13.3. Register of Members

13.3.1. The Company shall maintain a register of Members.

13.3.2. The register of Members shall be kept at the principal place of administration of the Company.

13.4. Termination and suspension

- 13.4.1. A Member's Membership will be terminated -
- 13.4.1.1. if the Member resigns from Membership in accordance with clause 13.2;
 - 13.4.1.2. on the Member ceasing to exist, or be registered or authorised as any of the institutions referred to in clause 1.2.22;
 - 13.4.1.3. upon the issue of a final order of liquidation of the Member or commencement of business rescue, or curatorship, or resolution procedures (as the case may be) proceedings against the Member concerned;
 - 13.4.1.4. upon the passing of an ordinary resolution in favour of the removal of such Member at a duly convened general meeting of the Company; or
 - 13.4.1.5. by the passing of a resolution of the Board in favour of the removal of such Member.

13.5. Notwithstanding anything to the contrary herein contained or implied, the termination of Membership shall in no way release a Member of any obligation undertaken by that Member prior to the termination of its Membership.

13.6. A Member who submits a notice to resign in terms of clause 13.2 or whose membership is terminated or suspended in terms of clause 13.4 or clause 13.7 –

- 13.6.1. shall be bound by the provisions of this MoI and any Rules of the Company until the date of the final termination of its Membership; and
- 13.6.2. shall not be entitled to any refund and shall be liable for its financial and/or any other responsibilities to the Company, including any arrears which are due up to the date of expiry of its period of notice.

13.7. The Board may suspend membership, for such period as it deems appropriate, or terminate Membership, either summarily or on such notice period as it deems appropriate, if:

- 13.7.1. the conduct of the Member has or is likely to cause reputational risk to the Company;
- 13.7.2. the Member fails to attend 2 (two) Board meetings without explanations that are acceptable to the Board; or
- 13.7.3. non-payment of Contributions, without prior arrangement or notice to the Board.

13.8. Obligations of Members

- 13.8.1. Each Member of the Company must comply with the BASA Code of Ethics published by the Company from time to time.
- 13.8.2. Each Member that is a Bank must comply with:
 - 13.8.2.1. the Code of Banking Practice published by the Company from time to time; and

13.8.2.2. the terms of reference published by the Ombudsman for Banking Services from time to time.

13.8.3. Termination of membership of the Company in terms of clause 13.4 will be deemed to be termination of membership of the Ombudsman for Banking Services.

14. CONTRIBUTIONS

14.1. All Members shall be obliged to pay annual Contributions in respect of their membership of the Company, and, in addition, in respect of their membership of and participation in any association of the Company, in both cases in amounts determined by the Board annually in accordance with this Mol.

14.2. The Board shall determine the total annual Contributions to be levied upon and paid by the Members and apportion the obligation to pay the total amount so determined between the Members in accordance with the following provisions:

14.2.1. Members shall pay Contributions based on the pro-rata portion of their South African Held Assets as percentage of the total South African Held Assets of all Members, provided that Category 1 Members shall be obliged to pay a minimum Contribution to be determined by the Board; and

14.2.2. the Contributions for all Members shall be payable in the following manner and within the following time periods:

14.2.2.1. Category 1 Members – the entire Contribution within the first 10 (ten) Business Days of the financial year (1st of January);

14.2.2.2. Category 2 Members – 50% of the Contribution within the first 10 (ten) Business Days of the financial year (1st of January) and the balance within the first 10 (ten) Business Days of the 1st of July;

14.2.2.3. Category 3 Members – the Contribution in quarterly instalments within the first 10 (ten) Business Days of the 1st Day of January, April, July and October;

14.2.3. All Contributions levied upon Members shall be payable on presentation of written notice or statement of account in respect of such Contributions and –

14.2.3.1. Members shall not be entitled to vote at any general meeting of Members if any Contribution which has been levied is unpaid at the time of the holding of the meeting; and

14.2.3.2. if any Member fails to pay any outstanding Contributions within 90 (ninety) Days of having been given notice by the Company that their Contributions are in arrears, the Board shall be entitled to terminate such Members' membership of the Company under clause 13.8.3;

14.2.3.3. the Board may further fix Contributions and payment terms in respect of Contributions payable by Members, in regard to their membership of any association which may be established by the Board and such Contributions shall be in addition to the Contributions payable in respect of membership of the Company. The Board may charge varying Contributions for each association to

which a Member may belong, which Contributions shall be calculated in accordance with the provisions of clause 14.2;

- 14.2.3.4. Notwithstanding anything to the contrary contained in this Clause 14, the Board may vary the amount(s) and / or method of computation of Contributions determined in terms of this clause 14 from time to time in their discretion, and in the event that special funds become necessary for any purpose, the Directors may at any time levy an additional Contribution or Contributions for such purpose.

15. **MEMBERS RIGHT TO INFORMATION**

Each Member is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, such information as provided for in the Act.

16. **NON-TRANSFERABILITY OF MEMBERSHIP**

Membership of the Company may not be assigned or transferred unless the Board shall otherwise determine, and in that event, subject to such conditions and in such manner as the Board in its sole discretion may deem appropriate.

17. **PROXY REPRESENTATION**

- 17.1. A Member may, at any time by written proxy appointment ("**Proxy Instrument**") which complies with this MoI and the Act, appoint any individual, including an individual who is not a Member, as a proxy to –

- 17.1.1. participate in, and speak and vote at, a Members' Meeting on behalf of the Member; or
- 17.1.2. give or withhold written consent on behalf of the Member to a decision contemplated in section 60 of the Act and clause 26 of this MoI;

and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for use as a Proxy Instrument) shall be governed by section 58 of the Act and this clause 17.

- 17.2. The Board may determine a standard form of Proxy Instrument and make it available to Members on request.
- 17.3. Subject to the provisions of the Act, a Proxy Instrument may be an instrument created or transmitted by electronic or other means, including electronic mail.
- 17.4. Unless the contrary is stated therein, a Proxy Instrument which complies with the Act and this MoI shall, if any meeting to which it relates is adjourned or postponed, be valid at that meeting when it resumes after such adjournment or commences after such postponement, even if it had not been lodged timeously for use at the meeting as originally scheduled (prior to the adjournment or postponement).
- 17.5. A Member may not appoint two or more Persons concurrently as proxies.
- 17.6. A proxy may not delegate the proxy's authority to act on behalf of the Member to another Person, unless the right to delegate is specifically contained in the Proxy Instrument and the delegation occurs by way of a further Proxy Instrument which itself complies with the requirements of the Act and this MoI.

17.7. A proxy shall, as contemplated in section 58(7) of the Act, be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any voting right of the Member; provided that, if the Proxy Instrument specifically provides otherwise then the specific provisions of the Proxy Instrument shall prevail.

18. RECORD DATES

The Board may, in accordance with section 59 of the Act, determine and publish a Record Date for the purposes of determining which Members are entitled to –

- 18.1. receive a notice of a Members' Meeting;
- 18.2. participate in and vote at a Members' meeting; or
- 18.3. decide any matter by written consent or by Electronic Communication,

provided that, if the Board does not determine a Record Date for any action or event, as contemplated in this clause 18 the Record Date shall be as determined in accordance with section 59(3) of the Act.

19. MEETINGS OF MEMBERS

- 19.1. Subject to the provisions of this clause 19, the Company shall not be required to hold any meetings of Members other than those required by the Act.
- 19.2. In addition to meetings required by the Act, the Board or the Company Secretary of the Company shall be entitled to call a Members' meeting at any time.
- 19.3. The Company shall hold a Members' meeting in the circumstances contemplated in section 61(2) of the Act.
- 19.4. The Company authorises any Member to call a Members' meeting for the purposes of section 61(11) of the Act.
- 19.5. The right of Members to requisition a meeting, as set out in section 61(3) of the Act, may be exercised by at least 10% of the voting Members, as provided for in that section.
- 19.6. The Board may determine the location for any Members' meeting, to be held in the Republic.

20. NOTICE OF MEETINGS OF MEMBERS

- 20.1. All notices intended or required to be given by the Company to any Member of the Company as of the Record Date for receiving notice of that Members' meeting at least 10 (ten) Business Days before that Members' Meeting is to begin.
- 20.2. The notice of a Members' meeting shall be in writing, shall include the items set out in section 62(3) of the Act and shall be delivered in accordance with the Act.

21. CONDUCT OF MEETINGS

- 21.1. The Company –
 - 21.1.1. may provide for a Member's meeting to be conducted in whole or in part by Electronic Communication; and
 - 21.1.2. must always make provision for any Member, or proxy for a Member, to participate by Electronic Communication in every Members' meeting that is being held in person, irrespective of whether such meeting is held in the Republic or elsewhere,

and any Electronic Communication facility so employed must ordinarily enable all Persons participating in the meeting to at least speak and hear each other at approximately the same time and to participate reasonably effectively in the meeting. The authority of the Company shall be limited and restricted accordingly.

- 21.2. The responsibility for, and any expense of, gaining access to the medium or means of Electronic Communication employed for any Members' shall be borne by the Member or proxy. If provision has been made for a Members' meeting to be conducted by Electronic Communication or for participation in a Members' meeting by Electronic Communication and the medium or means of such Electronic Communication is available, functioning and reasonably accessible, then the Members' shall be entitled to proceed even if a Member or proxy is not able to gain access to the medium or means of Electronic Communication so employed.
- 21.3. The Company shall ensure that any notice of any Members' meeting, at which it will be possible for Members to participate by way of Electronic Communication, shall inform Members of that form of participation and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication.
- 21.4. A resolution passed at any meeting that employs Electronic Communication shall, notwithstanding that the Members are not present together in one place at the time of the meeting, be deemed to have been passed at a meeting duly called and constituted on the Day on which, and at the time at which, the meeting was so held. For the avoidance of doubt, it is recorded that all of the provisions of clauses 17, 22 and 24 shall apply to these meetings.

22. **MEMBERS MEETING QUORUM AND ADJOURNMENT**

- 22.1. The quorum requirements for a Members' meeting shall, subject to section 64(3) of the Act (if applicable) and clause 22.6, be that such a meeting shall not begin unless at least 10 (ten) Members are Present at such Meeting.
- 22.2. Notwithstanding the provisions of section 64(4) of the Act, if, within 30 (thirty) minutes after the appointed time for a Members' meeting, –
 - 22.2.1. the quorum requirements for the meeting to begin have not been satisfied, the meeting shall automatically be postponed without motion or vote to the same Day in the following week (or if that Day is not a Business Day, the next Business Day);
 - 22.2.2. or at such later time during the meeting that a particular matter is to be considered, the quorum requirements for consideration of that matter to begin or continue have not been satisfied, then, –
 - 22.2.2.1. if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
 - 22.2.2.2. if there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, to the same Day in the following week (or if that Day is not a Business Day, the next Business Day).

- 22.3. The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 22.2 unless the location for the meeting is different from –
- 22.3.1.1. the location of the postponed or adjourned meeting; or
 - 22.3.1.2. the location announced at the time of adjournment, in the case of an adjourned meeting.
- 22.4. The adjourned or postponed meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.
- 22.5. The chairperson of the meeting shall be entitled to extend the 30 (thirty) minute limit referred to in clause 22.2 in the circumstances contemplated in section 64(5) of the Act.
- 22.6. If, at the time appointed in terms of this clause 22 for an adjourned meeting to resume, or for a postponed meeting to begin, the quorum requirements have not been satisfied, the Members Present at such Meeting shall be deemed to constitute a quorum.
- 22.7. A Members' meeting, or the consideration of any matter being debated at a Members' meeting, may, subject to clause 22.9 be adjourned as contemplated in sections 64(10), 64(11) and 64(12) of the Act, it being recorded that the periods of adjournment set out in section 64(12) of the Act shall apply without variation.
- 22.8. The Board may, at any time after notice of a Members' meeting, other than a Members' meeting that is required to be convened in terms of clause 19, has been given but prior to the commencement of that meeting, postpone that meeting to such later date as may be determined by the Board at the time of determining to postpone the meeting, or may be postponed to an unspecified date to be decided by the Board at a later stage; provided that the Board may not so postpone the date of any such meeting beyond the date (if any) by which that meeting is required by this Mol or the Act to be held.
- 22.9. If a Members' meeting is postponed or adjourned, whether in terms of clause 22.2, clause 22.7, clause 22.8 or otherwise, the Company must, within 48 hours thereafter, send notice of the postponement or adjournment to all Members who were entitled to receive notice of the meeting. Such notice must contain the time and date of, and the location for, the continuation or resumption of the meeting, the business to be dealt with thereat and any other information which the Board may decide to include therein; provided that, if the meeting is to be postponed to an unspecified date to be decided by the Board, the notice shall contain a statement to that effect and a further notice containing the time, date and location of such meeting shall be sent forthwith upon being decided by the Board. If written notice is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat may be dealt with at a new meeting of which fresh notice has been given in accordance with this Mol.
- 22.10. Even if he is not a Member, any Person admitted and permitted to speak by the chairperson of the meeting, may attend and speak at any Members' meeting, but may not vote, unless he is a Member or the proxy or representative of a Member.

23. **CHAIRPERSON OF MEMBERS' MEETINGS**

- 23.1. The chairperson of the Board or, failing him/ her, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each Members' meeting; provided that, if no chairperson or deputy chairperson is present and willing to act, the Members present shall elect one of the

Directors or, if no Director is present and willing to act, a Member or a representative or proxy of a Member, to be the chairperson of that Members' meeting.

- 23.2. The chairperson of a Members' meeting shall, subject to this MoI and the Act, determine the procedure to be followed at that meeting but shall not have a second or casting vote in addition to his vote as a Director at any Members' meeting.

24. **RESOLUTIONS**

- 24.1. Every resolution shall, unless a poll is demanded in terms of clause 24.2, be decided on a show of hands. A declaration by the chairperson that a resolution has been carried on a show of hands, either unanimously or by a particular majority, or rejected, and an entry to that effect in the book containing the minutes of the proceedings of meeting of the Company, shall be sufficient evidence of this fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 24.2. A poll may be demanded on any question, save the election of the chairperson, by:

24.2.1. the chairperson; or

24.2.2. not less than 5 (five) Members having the right to vote at the meeting; or

24.2.3. a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting;

and such demand may be made either before or immediately after the result of a show of hands is declared.

- 24.3. The demand for a poll may be withdrawn by the Persons making it at any time prior to the commencement of the ballot.

- 24.4. If a poll is duly demanded it shall be taken in such manner as the chairperson shall decide and either at once, or, if the chairperson shall think fit, after an interval or adjournment or otherwise, provided that a poll on the question of an adjournment shall be taken at the meeting, without adjournment. No notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question upon which the poll is demanded.

- 24.5. Notwithstanding any postponement of the taking of the poll the result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

- 24.6. The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting.

25. **MEMBERS' VOTES**

- 25.1. At a meeting of the Company every Person present and entitled to exercise voting rights in terms of this MoI shall be entitled to 1 (one) vote.

- 25.2. Where a vote is taken on a show of hands at any general meeting of members, for the passing of a special resolution, every Person present as a representative or a proxy shall have only one vote irrespective of which Category of Member or Members he represents and irrespective of the number of Members he represents.

- 25.3. Where a vote is taken on a poll, save in the case of a resolution referred to clause 24.1, for the passing of a special resolution at any general meeting of Members, each Member Present at the Meeting whether as member or a proxy for a Member shall have one vote.

- 25.4. In order for -
- 25.4.1. an Ordinary Resolution to be approved, it must be supported by a majority of the voting rights exercised on the resolution; or
 - 25.4.2. a Special Resolution to be approved, it must be supported by at least 75% of the voting rights exercised on the resolution, with the exception of litigation matters in respect of which it must be supported by 100% of the voting rights exercised on the resolution, at a quorate Members' meeting which is quorate in relation to that resolution; provided that this clause shall not detract from the Members' ability to adopt resolutions by written vote as referred to in clause 26
- 25.5. If any Member abstains from voting in respect of any resolution, that Member shall, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.
- 25.6. Except for those matters which require the approval or authority of a Special Resolution in terms of section 65(11), any other section of the Act or any provision of the Regulations or the approval or authority of a Special Resolution of the Members in terms of this MoI, no other matters which the Company may undertake require the approval or authority of a Special Resolution of the Members.

26. **WRITTEN RESOLUTIONS BY MEMBERS**

- 26.1. A resolution that could be voted on at a Members' meeting may instead be adopted by written vote, as contemplated in section 60 of the Act, if it is –
- 26.1.1. submitted to the Members entitled to exercise voting rights in relation to the resolution; and
 - 26.1.2. supported by Persons entitled to exercise sufficient voting rights for it to have been adopted, in terms of this MoI and the Act, as an Ordinary or Special Resolution, as the case may be, at a properly constituted and quorate Members' meeting.
- 26.2. Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been adopted on the date on which the Company received the written vote of the Member or the proxy of the Member whose vote resulted in the resolution being supported by sufficient votes for its adoption, irrespective of any votes received thereafter; provided that such date falls within the 20 Business Day period referred to in section 60(1)(b) of the Act.

PART E - DIRECTORS' POWERS AND PROCEEDINGS

27. **AUTHORITY OF BOARD OF DIRECTORS**

- 27.1. The business and affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of the functions of the Company, except to the extent that this MoI or the Act provides otherwise.
- 27.2. Subject to clauses 9 to 11 and provided that the Board shall at all times act to enable and further the main object and business of the Company, the Board shall be authorised to -
- 27.2.1. acquire, sell, dispose of and deal in property or assets, movable or immovable corporeal or incorporeal, and to invest in the name of the Company, any monies not immediately required for the purposes of the Company, as the Members

may decide, in any financial institution as defined in the Financial Sector Regulation Act, No 9 of 2017, and in any securities as defined in the Financial Markets Act, No. 19 of 2012;

- 27.2.2. open and operate banking accounts in the name of the Company;
- 27.2.3. appoint auditors and to fix their remuneration;
- 27.2.4. procure that the Company be registered or recognized in any country or place, including registration under the laws of the Republic for the time being related to the registration of the companies;
- 27.2.5. hire or take or lease any premises, equipment, vehicle or other asset;
- 27.2.6. employ and remunerate staff and to grant pensions, medical aid, allowances, advance payment and bonuses to past or present employees;
- 27.2.7. join or co-operate with, any other association, business or entity for the furtherance of the Company's activities;
- 27.2.8. procure and/or provide legal, accounting and other specialist advice in respect of matters affecting the Members;
- 27.2.9. undertake public relations functions for the Members;
- 27.2.10. procure or issue publications of printed or visual matter, relating to the Members;
- 27.2.11. receive from Members or others absolutely or in trust, fees, Contributions, levies, donations and grants, to be used for the main business and object of the Company;
- 27.2.12. raise or borrow or to secure the payment of money or the performance of any obligation in such manner and on such terms as may seem expedient;
- 27.2.13. insure against losses, damages, risk and liabilities of all kinds which may affect the Company or its staff, or representatives of Members; and
- 27.2.14. do all such things as are incidental or conducive to the attainment of the above in carrying out the main business and object of the Company but not for the specific benefit of any individual Member.

27.3. The Board may delegate to any one or more Persons any of its powers, authority and functions (including the power to sub-delegate).

28. **APPOINTMENT OF DIRECTORS**

- 28.1. The Company shall have a minimum of 5 (five) Directors and a maximum of 12 (twelve) Directors.
- 28.2. The Directors to the Board shall be appointed on a biennial basis, in the following manner –
 - 28.2.1. each of the Category 2 Members whose Contributions measured over the previous two consecutive years (as at the time when the Company calls for nominations of Directors) exceed 5% (five per cent) of the total income from Contributions received by the Company in respect of the previous two consecutive years (calculated at the time when the Company calls for nomination of Directors) and each of the Category 3 Members shall be required

- to nominate its chief executive officer to the Board, (by whatever name or title he is designated) or his nominee accepted by the Board and such director shall hold office until the Member which nominated him shall, in writing, withdraw his nomination, whereupon he shall cease to be a Director, provided that the nomination may not be withdrawn while the Director concerned remains the chief executive officer of that member. In withdrawing such nomination, the Member which nominated him shall be required to nominate another person being its new chief executive officer to fill the vacancy so occurring on the Board;
- 28.2.2. to represent the interests of the Category 2 Members, other than those referred to in 28.2.1, whose Contributions measured over the previous two consecutive years (as at the time when the Company calls for nomination of Directors) are less than 5% (five per cent) of the total income from Contributions received by the Company in respect of the previous two consecutive years (calculated at the time when the Company calls for nomination of Directors), the Board shall appoint 2 (two) senior executives of such Category 2 Members as representatives and 2 (two) alternates to the Board as members; and
- 28.2.3. to represent the interests of the Category 1 Members, the Board shall appoint 2 (two) senior executives of such Members as representatives and 2 (two) alternates to the Board as members.
- 28.3. Any Director nominated in terms of clause 28.2.1 shall cease to be a Director upon the Member which nominated him ceasing to be a Member of the Company.
- 28.4. The Company may not permit a Person to serve as Director if that Person is ineligible or disqualified in terms of –
- 28.4.1. this Mol;
- 28.4.2. the Act;
- 28.4.3. the Financial Sector Regulation Act, No. 7 of 2017;
- 28.4.4. any other relevant and applicable legislation; or
- 28.4.5. has been denied registration of membership of any professional body or has had that registration or membership revoked, withdrawn or terminated by a professional body because of matters related to honesty, integrity, or business conduct.
- 28.5. If the number of Directors falls below the minimum number specified in clause 28.1, the remaining Directors shall, as soon as possible, but in any event within three months after the date on which the number of Directors fell below such minimum ("**Vacancy Period**"), fill the vacancy/ies by making an appointment/s in accordance with clause 28.2.
- 28.6.** The failure by the Company to have the minimum number of Directors specified in clause 28.1 during the Vacancy Period does not limit or negate the authority of the Board or invalidate anything done by the Board or the Company. If, and for so long as, the number of Directors remains below the minimum number after the expiry of the Vacancy Period, the Director/s in office may act only for the purpose of filling vacancies in their body by convening a Members' meeting. If there are no Directors or Directors able and willing to act, then any 2 (two) Members may summon a general meeting for the purpose of electing Directors.

- 28.7. Save to the extent otherwise agreed in writing by the Company or as provided for in this MOI, each Person appointed as a Director or Alternate Director shall, prior to his appointment becoming effective, execute a written acknowledgement in which he –
- 28.7.1. acknowledges and agrees that –
- 28.7.1.1. he shall not be an employee of the Company; and
- 28.7.1.2. he shall not have any claims against the Company for remuneration or compensation for services rendered to the Company or for reimbursement of expenses incurred in the business of the Board other than such remuneration or reimbursement, if any, as may be approved in the manner contemplated in clause 36; and
- 28.7.2. furnishes the Company with a postal address, facsimile number and e-mail address at which notice of meetings shall be given to him.
- 28.8. All acts performed by Directors or by a committee of the Board or by any Person acting as a Director or a member of a committee of the Board shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or Persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 28.9. Each Director and each Alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 of the Act in the event that they (or any person who is a related person to them) has a personal financial interest in any matter to be considered by the Board.

29. **ALTERNATE DIRECTORS**

- 29.1. Each Director shall be entitled to nominate a Person to act as Alternate Director in his place during his absence or inability to act as such Director, provided that the Person shall, in the case of a Director appointed in terms of clause 28.2 be nominated in writing and must be approved by resolution of the Board.
- 29.2. The appointment of an Alternate Director shall terminate –
- 29.2.1. when the Director to whom he is an Alternate Director ceases to be a Director;
- 29.2.2. upon the removal of that Alternate Director from his office as such;
- 29.2.3. upon the Alternate Director himself giving notice to the Company Secretary that he ceased to represent the Director concerned; and/or
- 29.2.4. if such Alternate Director becomes ineligible or disqualified from serving as a Director in terms of clause 28.4;
- 29.3. An Alternate Director shall, subject to this MoI –
- 29.3.1. act in the place and stead of the Director to whom he is an Alternate Director, act as a Director and generally exercise all the rights of a Director, but only –
- 29.3.1.1. at any meeting of the Board during the absence of that Director from such meeting; or

29.3.1.2. otherwise than at a meeting of the Board, during the incapacity of that Director or to the extent authorised by that Director in writing,

and if more than one Alternate Director to a Director is present at a meeting or able to act in the place of that Director and that Director has not indicated in writing who should act in his place, then those Alternate Directors may agree as to which of them should act in the place of that Director and in the absence of such agreement between them, the most senior of them in age shall act in the place of that Director; and

29.3.2. in all respects be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the Director to whom he is an Alternate Director, but shall not have any claim of any nature whatsoever against the Company for any remuneration of any nature whatsoever.

30. **BOARD COMMITTEES**

30.1. The Board shall appoint any number of Board committees , with such powers and duties, as may be required by the Act, and may in addition –

30.1.1. delegate to any committee any of the authority of the Board (including the authority to sub-delegate); and

30.1.2. include any Person who is not a Director of the Company in any such committee provided that such members who are not Directors, shall not be entitled to vote at committee meetings,

and, accordingly, the authority of the Board in this regard is not limited or restricted by this Mol.

30.2. The authority and power of any committees established by the Board is not limited or restricted by this Mol, but may, subject to the requirements of the Act in respect of committees required to be established by the Act, be restricted by the Board when establishing any committee or by subsequent resolution.

31. **CHAIRPERSON OF THE BOARD**

31.1. The Board shall be entitled, from time to time, to appoint –

31.1.1. a Director to act as the chairperson of the Board; and

31.1.2. to appoint one or more Directors to act as deputy chairperson/s of the Board, for such period as may be determined by the Board and, even though that period has not yet expired, to remove that chairperson or deputy chairperson from his post, with or without nominating a replacement.

31.2. The chairperson of the Board or, failing him, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each meeting of the Board; provided that, if no chairperson or deputy chairperson is present and willing to act, the Board present shall elect one of the Directors to be the chairperson of that meeting of the Board.

31.3. The chairperson of a meeting of the Board referred to in clause 31.2 shall, subject to the Act and this Mol and any decision of the Board, determine the procedure to be followed at that meeting.

31.4. Notwithstanding the provisions of section 73(5)(e) of the Act, the chairperson of the Board or any meeting of the Board shall not have a second or casting vote in addition to his deliberative vote on any matter referred to the Board.

32. MANAGING DIRECTOR

32.1. The Board may, from time to time, appoint a Managing Director for such term and at such remuneration as they may think fit, and may revoke such appointment subject to the terms of any agreement entered into in any particular case. The appointment of such Managing Director shall terminate if he ceases to be a Director for any reason or if the Members so resolve. For the avoidance of doubt, the Managing Director shall serve as a Director on the Board.

32.2. Subject to the provisions of any contract between himself and the Company, the Managing Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.

32.3. The Board may from time to time entrust to and confer upon a Managing Director for the time being such of the powers exercisable in terms of this MoI by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Board in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

33. COMPANY SECRETARY

The Company may, from time to time, elect to appoint a company secretary.

34. DIRECTORS' MEETINGS

34.1. The Board may –

34.1.1. meet, adjourn and otherwise regulate its meetings as it thinks fit; provided that, in accordance with section 73(2) of the Act, any Director shall be entitled to convene or direct the Person so authorised by the Board to convene a meeting of the Board; and

34.1.2. from time to time determine the form and time of the notice that shall be given of its meetings and the means of giving that notice, as contemplated in section 73(4) of the Act ; provided that, subject to clause 34.2, no meeting may be convened without notice to all of the Directors. The authority of the Board in this regard is not limited or restricted by this MoI.

34.2. If each of the Directors –

34.2.1. acknowledges actual receipt of the notice and agrees that the meeting should proceed;

34.2.2. is Present at a Meeting; or

34.2.3. waives 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.

34.3. The Board –

- 34.3.1. may provide for a meeting of the Board to be conducted in whole or in part by Electronic Communication; and
- 34.3.2. must always make provision for any Director to participate by Electronic Communication in every Board Meeting that is held in person,

and any Electronic Communication facility so employed must ordinarily enable all Persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in the meeting. The authority of the Board shall be limited and restricted accordingly.
- 34.4. The quorum for meetings of the Board shall be a majority in number of the Directors (or their Alternate Directors) then in office; provided that, unless the Board decides otherwise, –
 - 34.4.1. if a quorum is not present within 30 minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same Day in the following week (or if that Day is not a Business Day, the next Business Day), at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed; and
 - 34.4.2. if at any such postponed meeting a quorum is not present within 30 minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b), the Directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting.
- 34.5. If a meeting of the Board is postponed or adjourned, whether in terms of clause 34.4 or otherwise, the Company must, within 48 hours thereafter, send notice of the postponement or adjournment to all Directors (excluding those of the Directors who have agreed not to receive such notice of postponement or adjournment or agreed that the meeting may proceed without them) and that notice must contain the time and date of, and the location for, the continuation or resumption of the meeting and the business to be dealt with thereat. If written notice is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat may be dealt with at a new meeting of which fresh notice has been given in accordance with this Mol.
- 34.6. At any meeting of the Board, –
 - 34.6.1. an Alternate Director shall only be entitled to attend, speak or vote in accordance with clause 29.3;
 - 34.6.2. each Director shall, on every matter to be decided by the Board, have one vote; and
 - 34.6.3. a resolution of the Board shall be passed by a majority of the votes cast in the manner set out in clause 34.6.2 at a quorate meeting of the Board and there is no casting vote, so in the case of a tied vote on a resolution, that resolution is not adopted. This clause 34.6.3 shall not detract from the Board's ability to adopt resolutions as set out in clause 35.
- 34.7. The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes –

34.7.1. any declaration given by notice or made by a Director, as required by section 75; and

34.7.2. every resolution adopted by the Board.

34.8. Resolutions adopted by the Board –

34.8.1. must be dated and sequentially numbered; and

34.8.2. are effective as of the date of the resolution, unless the resolution states otherwise.

34.9. Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, shall be evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

35. **WRITTEN RESOLUTIONS BY DIRECTORS**

35.1. A decision that could be voted on at a meeting of the Board may instead be adopted by a written resolution that has been submitted to all of the Directors and signed by at least a majority of Directors (or their Alternate Directors).

35.2. Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of Directors and shall be inserted in the Company's minute book for meetings and resolutions of Directors.

35.3. Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been passed on the date on which it was signed by or on behalf of the Director (or Alternate Director) whose vote resulted in that resolution being supported by sufficient votes for that resolution to be adopted in accordance with clause 35.1, irrespective of any votes received thereafter.

35.4. The resolution may consist of one or more counterpart documents, each signed by one or more Directors (or their Alternate Directors).

35.5. An Alternate Director shall only be entitled to sign such a written resolution if permitted to do so in terms of clause 29.3.1.2.

36. **DIRECTORS' COMPENSATION**

36.1. The Company may pay remuneration to its Directors for their services as Directors; provided that such remuneration has been approved by a Special Resolution of the Members passed within the two previous years and approved by the Members. The authority of the Board is restricted accordingly.

36.2. Directors may also be paid all their reasonable travelling and other expenses necessarily incurred by them in connection with –

36.2.1. the business of the Company; and

36.2.2. attending meetings of the Directors or of committees of the Directors of the Company;

provided that such expenses shall first have been authorised or ratified by the Board if not included in the annual budget to be approved by the Board.

37. INDEMNIFICATION AND INSURANCE FOR DIRECTORS

37.1. For the purposes of this clause 37, a Director includes –

- 37.1.1. a former Director and an Alternate Director;
- 37.1.2. a Prescribed Officer; and
- 37.1.3. a Person who is a member of a committee of the Board,
irrespective of whether or not the Person is also a member of the Board.

37.2. The Board may, on behalf of the Company, as contemplated in sections 78(4), 78(5) and 78(7) of the Act, –

- 37.2.1. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 37.2.2. directly or indirectly indemnify a Director for expenses contemplated in clause 37.2.1, irrespective of whether or not it has advanced those expenses, if the proceedings –
 - 37.2.2.1. are abandoned or exculpate that Director; or
 - 37.2.2.2. arise in respect of any liability for which the Company may indemnify the Director, in terms of clause 37.2.3;
- 37.2.3. indemnify a Director (on terms and conditions which are the same as, or different from, the terms and conditions of the indemnity contained in clause 37.3) against any liability arising from the conduct of that Director, other than a liability or fine contemplated in section 78(6) of the Act; and
- 37.2.4. purchase or pay for insurance to protect –
 - 37.2.4.1. a Director against any liability or expense for which the Company is permitted to indemnify the Director in accordance with clause 37.2.3;
 - 37.2.4.2. the Company against any contingency, including –
 - 37.2.4.2.1. any expenses –
 - 37.2.4.2.1.1. that the Company is permitted to advance in accordance with clause 37.2.1; or
 - 37.2.4.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 37.2.1; or
 - 37.2.4.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 37.2.3;

and the authority of the Board in this regard is not limited or restricted by this MoI.

37.3. The Company shall and is hereby obliged to indemnify each Director against (and pay to each Director, on demand by that Director, the amount of) any loss, liability, damage, cost

(including all legal costs reasonably incurred by the Director in dealing with or defending any claim) or expense ("**Loss**") which that Director may suffer as a result of any act or omission of that Director in his capacity as a Director; provided that –

- 37.3.1. this indemnity shall not extend to any Loss –
 - 37.3.1.1. against which the Company is not permitted to indemnify a Director by section 78(6) of the Act;
 - 37.3.1.2. arising from any gross negligence or recklessness on the part of that Director;
 - 37.3.1.3. arising from any loss of or damage to reputation; or
 - 37.3.1.4. in the event and to the extent that the Director has recovered or is entitled and able to recover the amount of that Loss in terms of any insurance policy (whether taken out or paid for by the Company or otherwise);

and Directors shall not, in terms of this indemnity, be entitled to recover the Losses referred to in this clause 37.3.1 from the Company. All Losses other than those referred to in this clause 37.3.1 are referred to herein as "Indemnified Losses";

- 37.3.2. each Director's right to be indemnified by the Company in terms of this clause 37.3 shall exist automatically upon his/her becoming a Director and shall endure even after he/she ceases to be a Director until he/she can no longer suffer or incur any Indemnified Loss;

- 37.3.3. if any claim is made against a Director in respect of any Indemnified Loss, then -

- 37.3.3.1. the Director shall not admit any liability in respect thereof and the Director shall notify the Company of any such claim within a reasonable time after the Director becomes aware of such claim, in order to enable the Company to contest such claim. Notwithstanding the foregoing provisions of this clause 37.3.3, the Company's liability in terms of this indemnity shall not be affected by any failure of the Director to comply with this clause 37.3.3, save in the event and to the extent that the Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the Director complied with this clause 37.3.3;

- 37.3.3.2. the Company shall, at its own expense and with the assistance of its own legal advisers, be entitled to contest any such claim in the name of the Director until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and shall be entitled to control the proceedings in regard thereto; provided that -

- 37.3.3.2.1. the Director shall (at the expense of the Company and, if the Director so requires, with the involvement of the Director's own legal advisers) render to the Company such assistance as the

- Company may reasonably require of the Director in order to contest such claim;
- 37.3.3.2.2. the Company shall regularly, and in any event on demand by the Director, inform the Director fully of the status of the contested claim and furnish the Director with all documents and information relating thereto which may reasonably be requested by the Director;
- 37.3.3.2.3. the Company shall consult with the Director prior to taking any major steps in relation to or settling such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim; and
- 37.3.3.2.4. the Company shall not make any admission of wrongdoing on behalf of the Director without the Directors' express consent therefor;
- 37.3.4. to the extent that any Indemnified Loss consists of or arises from a claim or potential claim that the Company might otherwise have had against the Director, then the effect of this indemnity shall be to prevent the Company from making such claim against the Director, who shall be immune to such claim, and such claim shall therefore be deemed not to arise;
- 37.3.5. if this clause 37 is amended at any time, no such amendment shall detract from the rights of the Directors in terms of this clause in respect of any period prior to the date on which the resolution effecting such amendment is adopted by the Members;
- 37.3.6. all provisions of this clause 37.3 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this clause 37.3 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this MoI shall remain of full force and effect;
- 37.3.7. this indemnity shall not detract from any separate indemnity that the Company may sign in favour of the Director.

PART F - GENERAL PROVISIONS

38. FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION

- 38.1. The Company shall prepare annual financial statements within six months of the end of its financial year.
- 38.2. A copy of the annual financial statements for each financial year of the Company shall be delivered to all Members in accordance with clause 39 as soon as possible after those annual financial statements have been audited and approved by the Board.

39. NOTICES

- 39.1. Any notice that is required to be given to the Company, Members or Directors in terms of this MoI may be given in any manner prescribed in the Regulations and any notice so given shall be deemed to have been delivered as provided for in the Regulations as a result of the relevant method of delivery.
- 39.2. Each Member and Director shall –
- 39.2.1. notify the Company in writing of a postal address, which address shall be his registered address for the purposes of receiving written notices from the Company by post;
 - 39.2.2. notify the Company in writing of a physical address, which address shall be his registered address for the purposes of receiving written notices from the Company by hand; and
 - 39.2.3. unless otherwise agreed with the Company, notify the Company in writing of an Electronic Address, which address shall be his address for the purposes of receiving notices by way of email, respectively, and, if he has not notified the Company of any such postal address, physical address, Electronic Address, then he shall be deemed to have appointed the registered address of the Company as his physical address for the purposes of this clause 39.

40. RESOLUTION OF DISPUTES

- 40.1. In the event of there being any dispute or difference between Members and between any Member and the Company, who are bound by this MoI, including any dispute or difference arising out of or in respect of –
- 40.1.1. any of the provisions of this MoI; and/or
 - 40.1.2. any relationship between any 2 (two) or more persons in their capacities as Members; and/or
 - 40.1.3. any relationship between any person, in its capacity as a Member, on the one hand, and the Company on the other hand; and/or
 - 40.1.4. any right and/or obligation of any Member, in its capacity as a Member, against or to the Company and/or any other Member; and/or
 - 40.1.5. any right and/or obligation of the Company against or to any Member (in its capacity as a Member),
- such persons (“**Affected Persons**”), must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of arbitration. The reference to negotiation and mediation is a precondition to the Affected Persons having the dispute resolved by arbitration.
- 40.2. A dispute within the meaning of this clause exists once one person notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause 40.
- 40.3. Within 10 (ten) Business Days following such notification, the Affected Persons shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the persons for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.

- 40.4. In the event of the negotiation between the designated representatives not resulting in an agreement signed by the Affected Persons resolving the dispute within 15 (fifteen) Business Days thereafter, the Affected Persons Parties must refer the dispute for resolution by way of mediation in accordance with the then current rules of the Arbitration Foundation of South Africa (“**AFSA**”).
- 40.5. In the event of the mediation envisaged in clause 40.4 failing in terms of the rules of AFSA, the matter must, within 15 (fifteen) Business Days thereafter, be referred to arbitration as envisaged in the clauses below.
- 40.6. The periods for negotiation or mediation may be shortened or lengthened by written agreement between the Affected Persons.
- 40.7. Each Affected Person agrees that the arbitration will be held as an expedited arbitration in Sandton in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the Parties, including any appeal against the arbitrator’s decision. If the Parties cannot agree on the arbitrator or appeal arbitrators within a period of 10 (ten) Business Days after the referral of the dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA, who shall administer and manage the arbitration proceedings.
- 40.8. The provisions of this clause 40 shall not preclude any person from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict or mandamus pending finalization of this dispute resolution process for which the persons bound by this Mol irrevocable submit to the jurisdiction of a division of the High Court of the Republic of South Africa.