



REPUBLIC OF SOUTH AFRICA

COMPANIES ACT 71 OF 2008, AS AMENDED

MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY WITH MEMBERS

(The "MOI")

THE DIRECT MARKETING ASSOCIATION OF SOUTHERN AFRICA (NPC)

(hereinafter referred to as "the Association")

Registration Number:

2005/040417/08

The MOI of the Association is as follows

1. DEFINITIONS

1.1. In the interpretation of these MOI, unless inconsistent or otherwise indicated by the context:

- 1.1.1. **"Act"** means the Companies Act 71 of 2008, as amended from time to time;
 - 1.1.2. **"MOI"** means this MOI of the Association;
 - 1.1.3. **"Association"** means THE DIRECT MARKETING ASSOCIATION OF SOUTHERN AFRICA NPC, a non-profit company incorporated in the Republic of South Africa with registration number 2005/040417/08;
 - 1.1.4. **'Chairman'** means the Chairman of the Board of Directors;
 - 1.1.5. **"Directors / Board"** means the directors for the time being of the Association;
 - 1.1.6. **"in writing"** means written, printed or lithographed or partly one or partly another, and other modes of representing producing words in a visible form;
 - 1.1.7. **"month"** means one calendar month;
 - 1.1.8. **"member"** means a member of the Association as set out in Clause 3 below;
 - 1.1.9 **"body"** means any body of persons whether incorporated or unincorporated having perpetual succession, and shall include any statutory body;
 - 1.1.10. **"the Office"** means the registered office of the Association;
 - 1.1.11 **"PBO"** means a public benefit organisation as contemplated in the Income Tax Act of 1962; and
 - 1.1.12 **"AGM"** means Annual General Meeting of members as contemplated in the Companies Act.
 - 1.1.13 **"Code"** means the Association's self-regulatory Code on Principled Marketing.
- 1.2. A reference to a Section by number refers to the corresponding Section of the Companies Act, 2008, unless stated otherwise.
- 1.3. Words that are defined in the Companies Act, 2008, bear the same meaning in this MOI as in that Act.
- 1.4 Words importing the masculine gender include the feminine and the neuter gender and words in the singular number include the plural, and words in the plural number include the singular, unless the context otherwise requires.
- 1.5 The headings above any Clauses in this MOI are for information purposes only and shall not be taken into account in the interpretation of this MOI.

- 1.6 In the event of any provision of this MOI being unenforceable for any reason whatsoever, then such provision shall be deemed to be separate and severable, without in any way affecting the validity of the remaining provisions.

2. INCORPORATION

- 2.1 The Association is incorporated as from 2005 as a non-profit company with members, as defined in the Act.
- 2.2 The Association is incorporated in accordance with and governed by —
 - 2.2.1 the unalterable provisions of the Act that are applicable to non-profit companies; and
 - 2.2.2 the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitations, extensions, variations or substitutions set out in this MOI, and
 - 2.2.3 the applicable provisions of the Income Tax Act, No 58 of 1962 (the Income Tax Act).
- 2.3 The Association has, subject to Section 19(1)(b)(i) of the Act, all of the legal powers and capacity of an individual, and the legal powers and capacity of the Association and is not subject to any restrictions, limitations or qualifications save to the extent that the MOI provides otherwise.
- 2.4 There is no provision of the MOI which constitutes a restrictive condition as contemplated in Section 15(2)(b) of the Act.
- 2.5 The Association must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or the asset was derived, to any person who is or was an incorporator of the Association or to a Director or person appointing a Director of the Association except :-
 - 2.5.1 as reasonable remuneration for goods delivered or services rendered to or at the direction of the Association;
 - 2.5.2 as reasonable payment of, or reimbursement for, expenses incurred to advance the Association's main objectives;
 - 2.5.3 as a payment of an amount due and payable by the Association in terms of a bona fide agreement between the Association and that person or another;
 - 2.5.4 as payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance the main objectives of the Association; and
 - 2.5.5 in respect of any legal obligation binding on the Association.
- 2.6 For so long as the Association is a non-profit company that is registered as a PBO:
 - 2.6.1 The Association will not accept any donation which is revocable at the instance of the donor, save to the extent contemplated in Section 30(3)(b)(v) of the Income Tax Act;
 - 2.6.2 The Association will submit to the Commissioner a copy of any amendment to the MOI of the Association;
 - 2.6.3 The Association will comply with such reporting requirements as may be determined from time to time by the Commissioner;

- 2.6.4 The Association shall comply with such further applicable conditions as may be prescribed from time to time in terms of Section 30(3) of the Income Tax Act;
- 2.6.5 The Association will not use its resources directly or indirectly to support, advance or oppose any political party;
- 2.6.6 The income and property of the Association wheresoever derived will be applied solely towards the furtherance of its objectives, and no portion thereof shall be distributed whether directly or indirectly, to any person (otherwise than in the course of undertaking any public benefit activity); Provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration (as defined in the Fourth Schedule to the Income Tax Act) to any employee, office bearer or other person, having regard to what is generally considered reasonable in the sector, and in return for any services actually rendered to the Association; and
- 2.6.7 Upon the winding up, deregistration or dissolution of the Association, the assets of the Association remaining after the satisfaction of all its liabilities shall be transferred to any PBO contemplated in Section 30(3)(b)(iii) of the Income Tax Act having objectives similar to the Association's objectives to be determined by the Directors at or before the time of its winding up, deregistration or dissolution; or institutions, boards or bodies which are exempt from tax in terms of the provisions of Section 10(1)(c0) of the income Tax Act, which have as their sole business/objective of carrying on of any public benefit activity similar to that envisaged in Clause 2.8 of the Association's MOI. No past or present Director, or person appointing a Director, is entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied.
- 2.7 To the extent that any of the provisions of the Association's MOI conflict with the provisions of Clause 2.6, the provisions of Clause 2.6 shall prevail over such conflicting Clause.
- 2.8 The Objectives and Mission Statement of the Association are "to protect, promote and advance the interests of its members and prospective members; to keep members informed of new developments in interactive and direct marketing, to promote best practices, and to promote education and training in the field of direct and interactive marketing in all its aspects and related activities".

3. MEMBERSHIP

- 3.1 Membership shall, subject to the provisions of Clause 3.2 below, be open to all legal persons or bodies who subscribe to the objectives of the Association, who are active in the field of marketing, and who on application in such form, and subject to such admission fee, as may be determined by the Board from time to time, are admitted to membership of the Association.
- 3.2 The admission of any applicant as a member shall be entirely within the discretion of the Board, and subject to such conditions as the Board may determine from time to time.
- 3.2.1 Membership of the Association shall be by corporate membership only.
- 3.3 Membership shall be limited to corporate bodies, juristic bodies, firms (whether controlled by a single proprietor or otherwise), or any other body accepted by the Board for admission as a member.

3.4 Membership of the Association shall be divided into the following sub-categories:

3.4.1 SME 1 (1 – 9 employees)

3.4.2 SME 2 (10 – 29 employees)

3.4.3 SME 3 (30 – 49 employees)

3.4.4 Corporate 1 (50 -99 employees)

3.4.5 Corporate 2 (100 – 499 employees)

3.4.6 Corporate 3 (500 – 1000 employees)

3.4.7 Corporate 4 (Greater than 1000 employees)

3.5 For purposes of determining into which category a member falls, the number of employees shown above relate to the total number of employees, and not the number of employees within the marketing department(s).

3.6 For purposes of the imposition of subscriptions, the Board may create further, and distinguish between, sub-categories of members within the above categories, or reduce the categories.

4. TERMINATION OF MEMBERSHIP

4.1 Any member of the Association shall cease to be a member of the Association if:

4.1.1 it resigns; or

4.1.2 its membership is terminated in terms of this MOI; or

4.1.3 it enters into business rescue proceedings or its affairs are wound up, whether voluntary or compulsory.

4.2 A member wishing to resign must send to the Association by mail, or email its notice of resignation at least three (3) months before the date of its annual subscription fee is due. If such notice is not received timeously by the Association, the member shall be liable to pay for the ensuing year's subscription in full, after which its membership shall be deemed to lapse.

4.3 The membership of any member whose subscription is not paid within two (2) months of the due date for payment thereof shall automatically lapse. The Board may in their discretion upon payment of such subscription, reinstate such member's membership.

5. SUBSCRIPTIONS

5.1 Subscriptions shall be payable annually on the anniversary date of the subscription, or as otherwise determined by the Board, and it shall be the duty of the member to pay the subscription fee as and when it falls due.

5.2 The subscription fee will be annually reviewed by the Board who may determine different subscription fees in respect of different categories of members and in respect of different sub-categories within each such category.

- 5.3 The Board may, in its sole discretion, decline to accept any renewal subscription from any member, and in such event the membership shall lapse on the due date for payment of the renewal subscription which has been declined.
- 5.4 The Board may, at its discretion in addition to annual subscriptions determined in terms of Clause 5.2 above, impose on members such further levies as is deemed necessary for the purposes of the Association; provided that:
- 5.4.1 Such levies shall not exceed the amount reasonably required by the Association, as determined by the Board in consultation with the auditors, to defray urgent expenses up to the end of the financial year in which such levy is raised;
- 5.4.2 At least thirty (30) days written notice shall be given to members requiring payment of such levies;
- 5.4.3 The Board may, in imposing such levies, differentiate between different categories of members mutatis mutandis as envisaged in Clause 3.4 above.
- 5.5 In the event of any member's membership of the Association ceasing for any reason in terms of this MOI, the Association shall not be required to refund any portion of subscriptions paid for any period in advance of the date when such membership ceased.
- 5.6 The Board may at its discretion allow discounts to members paying three (3) annual subscriptions in advance.
- 5.7 Nothing shall preclude the Board from allowing discounts in respect of subscriptions provided it is reasonable and consistent with good business practice.

6. RULES

For clarification purposes, it is confirmed that the rules as contemplated in this Clause 6 are not the rules as referred to in Section 15 of the Act and as such the provisions of Section 15 of the Act that relate to rules as defined in the Act are not applicable.

- 6.1 The Board may make reasonable rules in regard to the running of the Association, the conduct of its members in regard to marketing and related subjects and generally in respect of any subject which the Board considers may be conducive to the attainment of the objectives of the Association in line with the MOI. The rules or Code may, in addition to such other penalties as the Board may prescribe for any breach by any member of the rules or this MOI or Code, lay down a system of fines payable by members for breach thereof, and any fines which may be imposed by the Board and the Legal and Ethics Committee, as determined in terms of such rules or Code, shall be a debt owing by the defaulting member to the Association.
- 6.2 Notice of the Board's intention to make any rules together with a draft copy of such rules shall, fifteen (15) business days prior to adoption, be made available to each member of the Association.
- 6.3 After the Board has adopted any rules envisaged in Clause 6.1 above, it shall give notice to each member of the adoption of such rules, and make available a copy thereof to each member.
- 6.4 The Board may from time to time adopt and approve other self-regulatory Code of Practice which may have been formulated by any other statutory marketing industry body to which the

Association may be aligned. Such other self-regulatory Code of Practice, once adopted by the Board, shall have the force and effect of rules made by the Board. In the event of the Board intending to adopt any other self-regulatory Code of Practice, the provisions of Clause 6.2 shall mutatis mutandis apply.

- 6.5 Until such time as the Board otherwise determines, the rules and Code currently adopted by the Board, together with that of any other statutory industry body to which the Association is aligned, shall be deemed to have been Code adopted by the Board in terms of this MOI.
- 6.6 The Board may further from time to time determine that rules or Code previously adopted shall no longer apply.

7. COMPOSITION OF BOARD

- 7.1 The non-Executive Directors shall be elected by the members at the AGM.
- 7.2 Subject to the provisions of the Act, the Board shall consist of not less than three (3) and no more than nine (9) Directors .
- 7.3 If the Board sets up a Committee and or Specialised Council (see Clause 10 below), at least one (1) Director should be a member of such Committee and or Specialised Council, and can also chair the meetings. If for any reason they are unable to act as chair of a Committee and or Specialised Council they shall tender their resignation to the Board. The Committee and or Specialised Council shall nominate a replacement to the Board for approval.
- 7.4 Subject to Clause 7.2 of this MOI, the Board shall be entitled to co-opt such further persons to the Board as they may deem fit. Any Director so co-opted shall remain a Director until the first AGM after his co-option. If his appointment is confirmed at such AGM meeting, he shall be deemed to have served one (1) year as a Director and shall after serving a further two (2) years, retire, but be eligible for re-election.
- 7.5 Prior to the appointment as a Director of the Association, every person nominated by members shall signify his acceptance of such nomination by signing and delivering a written consent letter to the office of the Association. Board members will consider such nomination for appointment. If appointed, such nominee shall remain a director until the first AGM after his appointment.
- 7.6 Upon any vacancy occurring in the Board prior to the next AGM, the vacancy in question may be filled by a person appointed by the Board. Any Director appointed as such by the Board shall remain a Director until the first AGM after his appointment at the conclusion of which his directorship shall terminate unless he is duly nominated and re-elected by Members. If he is re-elected at the AGM, he shall be deemed to have served one (1) year as a director and shall be entitled to serve a further two (2) years, and be eligible for re-election.
- 7.7 Members may only elect a maximum of 2 (two) persons that are not necessarily representatives of members, this will be done in accordance with a nomination process as approved by the Board.
- 7.8 The CEO shall be appointed by the Board and shall be an ex officio member of the Board.

8. REMOVAL AND ROTATION

8.1 The office of Director shall be vacated by any Director if:

8.1.1 If a member who nominated the Director withdraws its nomination, the nominating member may nominate a replacement to the Board, bearing in mind the expertise needed by that position to chair the relevant Committee and Specialised Council over which the predecessor presided, if any. The Board at its next meeting shall agree on the new nomination and the director shall serve until the next AGM.

8.1.2 he becomes disqualified from holding the office of a director of a company in terms of the provisions of the Act, or;

8.1.3 he resigns his office by notice in writing to the Association; or

8.1.4 he becomes of unsound mind;

8.1.5 having retired by rotation as envisaged in the MOI, he is not re-elected by members

8.1.6 he is directly or indirectly interested in any contract with the Association or participates in the profits of any contract with the Association; provided however that a Director shall not be required to vacate his office by reason of his being a member of any company or firm which has entered into contracts with or done work for the Association, if he shall have in advance declared the nature of his interests to the Board in the manner set out in the Act. This shall not apply to an Executive Director appointed by the Association in terms of Clause 12.3.

8.1.7 Any Director who has a conflicting interest shall absence himself from the relevant discussions and not vote in respect of any such contract or works or any matter arising there from, and if he does so his vote should not be counted. The requirements of Section 75 of the Act shall furthermore be complied with at all times.

8.2 In the case that a dispute arises on any of the reasons for the vacation of the office of Director the requirements of Section 71 of the Act shall apply.

8.3 Subject to the provisions of Clause 11 below, a Director shall not directly or indirectly, save for the Executive Director, receive any remuneration for his services.

8.4 Subject to Section 71 of the Act, a Director shall be removed if he absents himself from the meetings of the Board for a period of two (2) consecutive Board and Committee and Specialised Council meetings in a year without obtaining a leave of absence from the Chairman.

8.4.1 Leave of absence shall consist of due notice by post or email addressed to the Chairman and delivered to the Company Secretary at least one (1) week prior to the holding of the meeting, or such period deemed reasonable by the Board.

8.4.2 Directors are considered to have been present if they attend either physically or via electronic communication.

8.5 A third of all elected Directors shall retire at every AGM notwithstanding their period in office.

8.6 Subject to Clause 8.5 above, Directors shall be elected for three (3) years to the Board, and may be eligible for a second three (3) year term after re-election by the members at the AGM. Thereafter they must step down from the Board for at least three (3) years.

9. CHAIRMAN AND OFFICERS

9.1 The Chairman shall be elected by the Board following the AGM and his term in office will be aligned with his term of office as a Director.

9.2 If at any meeting the Chairman is not present within ten (10) minutes after the time appointed for holding the Board meeting, or being present is unwilling to act as Chairman, the Deputy Chairman shall act in his stead. If the Deputy Chairman is not present, or being present is unwilling to act as Chairman, the Directors present shall choose one of their numbers to be the Chairman of the Board meeting.

9.3 The other Officers of the Association shall be:-

9.3.1 A Deputy Chairman;

9.3.2 A Treasurer

These Officers shall be elected by the Board from amongst the Directors and their respective terms of office shall be aligned with their terms of office as Directors as contemplated in Clause 7.

10. COMMITTEES, SPECIALISED COUNCILS AND DELEGATION

10.1 The Board is authorised to set up Committees and Specialised Councils covering specific aspects of Data Driven Marketing to benefit and assist in the operation of the Association. Each such Committee and Specialised Council is to be governed by a Terms of Reference and could be chaired by a member of the Board.

10.2 The Board may revise these Committees and Specialised Councils annually and may either establish other Committees and Specialised Councils for other purposes as it deems fit, or may decide to disband any of the Committees and Specialised Councils covered in Clause 10.1 above if there is evidence that these are not operating to the benefit of the Association.

10.3 The Board shall delegate relevant powers to the Committees and Specialised Councils and the Executive Director and Officers to ensure that they operate effectively. The Board shall not delegate those powers which would remove the responsibilities of the Board to function effectively and in the best interest of the Association and to enable Directors to effectively fulfil their fiduciary and statutory duties.

11. DIRECTORS' EXPENSES

Every Director shall at all times be entitled to be reimbursed for any reasonable expenses such as travelling, subsistence and other expenses incurred by him in the performance of his duties.

12. POWERS OF DIRECTORS

12.1 The affairs and business of the Association shall be managed and controlled by the Board who may exercise all such powers of the Association as are contained in this MOI or by the Act or any statutory modification thereof required to be exercised by the Association in a General Meeting

of members, subject nevertheless to the provisions of this MOI, to the provisions of the Act or any modification thereof, and to such regulations not inconsistent with this MOI as may be prescribed by the Association in a General Meeting of members; but no regulation made by the Association in a General Meeting of members shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

- 12.2 The Board shall be vested with the sole power to borrow or raise money on behalf of the Association and for the purpose thereof to mortgage, hypothecate or pledge assets of the Association and to issue debenture bonds, provided this has been approved by all Board members.
 - 12.2.1 The Board may delegate any of its powers to the Executive Director on such terms and subject to such conditions as it may deem fit.
- 12.3 The Board shall appoint an Executive Director or other Executive Directors subject to such terms and conditions as it may deem fit and may remunerate any such Executive Director for his services rendered.
- 12.4 The Executive Director shall head the Company Secretary, executing and supervising the policies and decisions of the Board and the members in General Meeting. He shall be supported by a central administration and be responsible for the daily operations and representation of the Association. He shall be mandated to commit the Association to legally-binding contracts necessary for the daily running of the Association in line with a Delegation of Authority approved by the Board.

13. PROCEEDINGS OF DIRECTORS

- 13.1 The Board may meet for the dispatch of business, adjourn or otherwise regulate its meetings as the Directors think fit, save that:
 - 13.1.1 Each Director shall have one vote and questions arising at any meeting of the Board shall be decided by a majority of the votes exercised at the meeting;
 - 13.1.2 In the case of an equality of votes the Chairman shall not have a second or casting vote;
 - 13.1.3 Three (3) or more Directors may at any time request that a meeting of the Board of Directors be called with reasonable notice by sending a written, signed request to the Secretariat; and
 - 13.1.4 A meeting of the Board shall be called by post or email by the Company Secretary at least one (1) week before the meeting is to take place, the exception being for special board meetings in which case at least two (2) business days before the special board meeting is to take place.
- 13.2 The quorum necessary for the transaction of business of the Board shall be the majority of the Directors in office at any time being present in person or via electronic communication.
- 13.3 Subject to the provisions of Section 74 the Act, a resolution consented to in writing by a majority of the Directors in office at the time shall be as valid and effectual as if it had been passed at a duly called and constituted Board Meeting, on condition that all Directors have received reasonable notice of the matter. Such resolution may be signed in counterparts.

14. GENERAL MEETINGS OF MEMBERS

- 14.1 General meetings of members shall comprise both AGM's and Special General Meetings at which special business is conducted.
- 14.2 The Association shall hold its AGM each year; provided that not more than fifteen (15) months have elapsed between the date of one AGM and that of the next AGM.
- 14.3 Special General meetings shall be held at such time and place as the Board shall appoint or at such time and place as is determined if the meetings are convened under the relevant Sections of the Act. Special General Meetings may also be called on the requisition of members as determined in terms of Section 61 of the Act.

15. NOTICE OF GENERAL MEETINGS OF MEMBERS

- 15.1 General Meetings shall be called with at least fifteen (15) business days' notice.
- 15.2 Special General Meetings may be called by shorter notice than that specified if the requirements of Section 62(2) and (2A) of the Act are met.
- 15.3 Notice may be by post or email so long as it is addressed to the authorised representative of each member so designated to represent that member at a General Meeting. A copy of the notice may be made available on the members' only page of the Association's website on condition that all members have been duly informed of the availability of the notice on the website.
- 15.4 The notice shall specify the place, the date and the hour of the General Meeting, and nature of the business, and shall be given to members in the manner hereinafter mentioned in Clause 15.3 above.

16. PROCEEDINGS AT GENERAL MEETINGS OF MEMBERS

- 16.1 General Meetings shall be validly constituted if at least ten (10) of the paid up members at the time of the General Meetings are present in person or by proxy (with reference to Clause 19 below)
- 16.1.1 If the quorum is not reached at the commencement of the General Meeting it shall be reconvened in terms of Clause 17.1.
- 16.1.2 All Special Resolutions, including dissolution of the Association and modifications to the MOI may only be decided upon at a General Meeting (with reference to Clause 18.7 and 26 below).
- 16.2 The members at the AGM are responsible to elect the Directors of the Association. Removal of Directors by majority vote of members may be tabled for approval at any General Meeting, so long as a quorum of the paid up members are present in person or by proxy and subject to compliance with the requirements of Section 71 of the Act.
- 16.3 All business conducted at a Special General Meeting shall be deemed special. The following business is to be conducted at an AGM:-

- 16.3.1 The presentation of the annual financial statements, the report of the Board and the report of the Auditors;
 - 16.3.2 The appointment/re-appointment of the auditors ; and
 - 16.3.3 The election and/or re-election of the Directors of the Association.
- 16.4 No business shall be transacted at any General Meeting unless a quorum of members is present.
- 16.5 The Chairman shall chair any General Meeting. If at any General Meeting the Chairman is not present within ten (10) minutes after the time appointed for holding the General Meeting, or being present is unwilling to act as Chairman, the Deputy Chairman shall act in his stead. If the Deputy Chairman is not present, or being present is unwilling to act as Chairman, the Members present shall appoint another Director or one of their numbers to be the Chairman of the General Meeting.

17. ABSENCE OF QUORUM FOR GENERAL MEETINGS

- 17.1 If within thirty (30) minutes from the time appointed for any General Meeting a quorum, as stated in Clause 16.1 above, is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to a day not earlier than five (5) business days and not later than fifteen (15) business days after the date of the meeting , and if at such an adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting the members present in person or by proxy shall be a quorum.
- 17.1.1 Where a meeting has been adjourned as above, the Association shall, on a day not later than two (2) business days after the adjournment, circulate via email a written notice stating:
 - 17.1.2 The date, time and place to which the meeting has been adjourned;
 - 17.1.3 The matter before the meeting when it was adjourned; and
 - 17.1.4 The grounds of adjournment,
- And shall further give written notice to all members and other persons entitled to receive notice of General Meetings, informing them of the adjournment of the General Meeting and stating the information referred to above in relation to such adjourned General Meeting.
- 17.2 The Chairman may with the consent of any General Meeting at which a quorum is present (and shall, if so directed by the members) adjourn the General Meeting from time to time and from place to place, but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting at which the adjournment took place. When a General Meeting is adjourned as envisaged in this MOI, the provisions of this MOI relating to the notice of the adjournment of the General Meeting as set out above shall *mutatis mutandis* apply to such adjournment.

18. VOTING AT GENERAL MEETINGS OF MEMBERS

- 18.1 All members with voting rights, once they have paid their membership fee, have the right to vote.
- 18.2 At any General Meeting, a resolution put to the vote shall be taken by show of hands unless a poll is demanded in terms of Section 63(7) of the Act.
- 18.3 On a poll at a General Meeting, votes are to be calculated in respect to the category of member, as set out in Clause 3.4 above. Members designated as SMEs (having from 1 to 49 employees) will have 1 vote each; members designated as Corporates with 50 – 1000 employees will have 2 votes each, and members with over 1000 employees will have 5 votes each.
- 18.4 On a poll at a General Meeting, such poll should be taken in such manner as the Chairman directs. The result of the poll shall be deemed to be the resolution of the General Meeting at which the poll was held. In computing the majority on the poll, regard shall be had to the number of votes to which each member is entitled as set out in clause 18.3 above.
- 18.5 Scrutinisers shall be elected to declare the result of the poll and their decision, which shall be given by the Chairman of the General Meeting, shall be deemed to be the resolution of the General Meeting at which the poll is taken.
- 18.6 On a show of hands at a General Meeting, a declaration by the Chairman as to the result of the voting on any particular resolution and an entry to that effect in the minutes shall be conclusive proof of that result, without proof of the number of proportions of votes recorded in favour of, against, and as abstaining from such resolution.
- 18.7 Ordinary resolutions of members shall be deemed to be duly adopted if supported by a simple majority of the votes exercised on the ordinary resolution, provided a quorum of the paid up members are present in person or by proxy. Special resolutions as required by the Act shall be deemed to be duly adopted if supported by at least seventy five percent (75%) of the votes exercised on the special resolution, provided a quorum of the paid up members are present in person or by proxy. No resolution of members shall be regarded as adopted if more than fifty percent (50%) of the members present in person or by proxy abstain from voting on the resolution.
- 18.8 The Chairman of a General Meeting shall not be entitled to a second or casting vote.
- 18.9 Members unable to attend a meeting by means of a duly authorised representative may give a proxy (with reference to Clause 19 below) to any person.

19. PROXIES

- 19.1 Every member shall be entitled to attend any General Meeting via an authorised representative or represented by proxy.
- 19.2 Any such proxy form shall be in writing, signed by or on behalf of the member and is subject to the provisions of the Act. A proxy form shall be in such form as is approved or accepted by the Board.
- 19.3 Any proxy form for use at any General Meeting shall:

- 19.3.1 Be delivered prior to the proxy exercising any rights of the member at a General Meeting or the resumption of an adjourned meeting at which the person named therein proposes to vote;
 - 19.3.2 In addition to the authority conferred by the Act, except insofar as it otherwise provides, be deemed to confer the power generally to act at the General Meeting in question, subject to any specific direction as to the manner of voting;
 - 19.3.3 Be valid at every resumption of an adjourned meeting to which it relates, unless the contrary is stated therein;
 - 19.3.4 Not be used at the resumption of an adjourned General Meeting if it could not have been used at the General Meeting from which it was adjourned for any reasons other than it was not lodged timeously for the meeting from which the adjournment took place, or that the grantor of the proxy was personally present at the meeting;
 - 19.3.5 Not be able to delegate to another proxy;
 - 19.3.6 Not be valid after the expiry of two (2) months after the date when it was signed unless it specifically provides otherwise.
- 19.4 A vote cast or act done in accordance with the terms of a proxy form shall be deemed to be valid notwithstanding:
- 19.4.1 The previous death, insanity or other legal disability of the person appointing the proxy; or
 - 19.4.2 The revocation of the proxy unless a notice as to any of the abovementioned matters shall have been received by the Association at the office or by the Chairman of the General Meeting at the place of the General Meeting if not held at the office, before the commencement or resumption (if adjourned) of the General Meeting at which the vote was cast or the act was done or before the poll on which the vote was cast.

20. RESOLUTION IN WRITING BY MEMBERS

Subject to the provisions of Section 60 of the Act, a resolution in writing, signed by a majority of the members entitled to receive notice and to attend and vote at a General Meeting and inserted in the minute book kept in terms of Clause 21.1 shall be as valid and effective as if it had been passed at a General Meeting duly called and constituted. A resolution in terms of this Clause may consist of several documents of the same form, each of which is signed by one or more members in terms of this Clause, and shall be deemed to have been passed on the date of signature thereof by the last member entitled to sign same.

21. MINUTES AND INSPECTION

- 21.1 The Directors shall keep record of all minutes and written resolutions of all Board, Committee and Specialised Council and General Meetings in a book provided for that purpose.

- 21.2 The minutes and written resolutions kept in terms of Clause 21.1 above (or any extract thereof) purported to be signed by the Chairman or Deputy Chairman or the Company Secretary shall be *prima facie* evidence of the matters therein stated.
- 21.3 Written resolutions and minutes of meetings of the Board; Committees and Specialised Councils shall not be open for inspection by members.

22. ACCOUNTS AND ACCOUNTING RECORDS

- 22.1 The Directors shall cause to be kept such accounting records as are prescribed by the Act and in particular such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the Association.
- 22.2 The Association's accounting records shall be kept at the Office or such other place or places as the Directors think fit and shall at all reasonable times be open to inspection by the Directors and by past directors. In the case of the latter, in respect of the period during which they held office as Directors.
- 22.3 The Directors shall from time to time determine whether, and to what extent, and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to the inspection by members. No member (not being a Director) shall have any right to inspect accounting records or any other documents of the Association, excluding those rights referred to in Section 26 of the Act, without the authorisation of the Directors.
- 22.4 Auditors shall be appointed (and if necessary removed and replaced) and their duties regulated in accordance with the Act.
- 22.5 The Board may establish any reserve fund or funds for the purpose of meeting contingencies or for the furtherance of any of the objectives of Association and such fund or funds may be invested as the Directors deem fit.
- 22.6 The Board shall as soon as reasonably possible, prepare and adopt a budget detailing the estimates of income and expenditure (whether on capital or revenue account) of the Association for the ensuing financial year. A copy of such budget shall be recorded in the Minutes of the Board meeting held to approve such budget.

23. ANNUAL FINANCIAL STATEMENTS

- 23.1 The Association shall, in accordance with the Act, prepare the annual financial statements which fairly present the financial position of the Association and its business within 6 months of the financial year end of the Association and the Board shall approve such annual financial statements within the aforementioned period.
- 23.2 A copy of such annual financial statements, together with a copy of the report of the Board and the report of the auditors, is to be presented to the members at the AGM in accordance with Clause 16.3.1 of this MOI. These documents are to be sent to every member of the Association, or be made available on a members' only page of the Association's website, no less than fifteen

(15) business days before the date of the AGM. In this case each member shall be advised that these documents are so available.

24. NOTICES

- 24.1 A notice may be given by the Association to any member, in the manner set out in Clause 15 above, at the address, if any, within the Republic furnished by him to the Association for such purpose.
- 24.2 Notice of every General Meeting shall be given in writing and shall be delivered by hand, or sent by post or email:
- 24.2.1 to every member except those persons who have not supplied the address contemplated in Clause 24.1 above;
- 24.3 Any notice by the Association shall be signed on behalf of the Board by an authorised Director or by someone authorised by the Board.
- 24.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting,
- 24.5 The Association shall not be responsible for the loss in transmission of documents sent through the post to the address furnished by any member to the Association for the giving of notices to him, whether or not it was so sent at his request.

25 INDEMNITY

- 25.1 Subject to any contrary provision of Section 78 of the Act, every Director and other officer of the Association shall be indemnified out of the Association funds against all authorised and approved costs, expenses and liabilities properly incurred by him in the course of the Association's business.
- 25.2 Every member of the Board, Manager, Company Secretary and other Officer of the Association and any person appointed by the Association as its auditor shall be indemnified against all liability incurred by him in defending any proceedings (whether civil or criminal) arising out of any actual or alleged negligence, default, breach of duty or breach of trust on his part in relation to the Association in which judgement is given in his favour or in which he is acquitted or in connection with any matter in which relief is granted to him by the court in terms of Section 78 of the Act.

26. AMENDMENT


The Association may, by special resolution, do anything which in terms of the Act may be done only if authorised by this MOI and, in particular and without limiting the generality of the foregoing, alter its MOI in any way permitted by law subject only to any restriction in that regard contained in Clause 16.1.2 and 18.7 of the MOI.

27. USE OF LOGOS

Only members of the Association may reproduce the Association's logo on writing paper, etc. or affix a plaque to their office, or display this on their website or refer to their membership of the Association. If a member fails to pay its annual subscription or is expelled, it shall immediately desist from using or otherwise exploiting the Association's logo. The Association reserves the right to introduce other logos for specific purposes or to withdraw the right to use the logo as a sanction against members who do not comply with the requirements of the Codes.

28. WINDING-UP

If the Association is wound-up, whether voluntarily or compulsorily, or deregistered or dissolved, the assets remaining after payment of the liabilities of the Association and the costs of winding-up shall be given or transferred as per Clause 2.6.7.


S.M. DICKENS. 9/10/2019