



## DIRECT MARKETING ASSOCIATION OF SOUTH AFRICA NPC ("DMASA")

### 2024 NON-EXECUTIVE DIRECTOR NOMINATIONS

02 September 2024

Dear DMASA Members

This notice is to call for nominations from members of DMASA to serve as Non-Executive Directors on the DMASA Board.

Clause 7.5 of the Memorandum of Incorporation ("MOI") refers to nominations by Members of Non-Executive Directors to serve on the board of DMASA.

All nominations should include the following :-

- i) Written consent from the person being nominated.
- ii) A letter of motivation for wanting to join the Board of Directors.
- iii) Nominee's curriculum vitae

and should reach the Secretariat, Shirley Braham via e-mail on [shirley@fluidrockgovernance.com](mailto:shirley@fluidrockgovernance.com) before the close of business on Wednesday, 18<sup>th</sup> of September 2024. The Board members will consider such nomination for appointment at their Board meeting to be held on 25<sup>th</sup> of September 2024.

Please refer to undermentioned attachments for information purposes :-

- Annexure A (Section 76 Companies Act, 2008 - Standards of directors' conduct)
- Annexure B (Section 69 Companies Act, 2008 - Ineligibility and disqualification directors)

#### **ANNEXURE A:**

#### ***Section 76 Companies Act, 2008 - Standards of directors' conduct.***

*(1) In this section, "director" includes an alternate director, and—*

- (a) a prescribed officer; or*
  - (b) a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board.*
- (2) A director of a company must—*
- (a) not use the position of director, or any information obtained while acting in the capacity of director—*
    - (i) to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or*
    - (ii) to knowingly cause harm to the company or a subsidiary of the company; and*
  - (b) communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director—*
    - (i) reasonably believes that the information is—*
      - (aa) immaterial to the company; or*
      - (bb) generally available to the public, or known to the other directors; or*
    - (ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality.*
- (3) Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director—*
- (a) in good faith and for a proper purpose;*
  - (b) in the best interests of the company; and*
  - (c) with the degree of care, skill and diligence that may reasonably be expected of a person—*
    - (i) carrying out the same functions in relation to the company as those carried out by that director; and*
    - (ii) having the general knowledge, skill and experience of that director.*
- (4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of director, a particular director of a company—*
- (a) will have satisfied the obligations of subsection (3) (b) and (c) if—*
    - (i) the director has taken reasonably diligent steps to become informed about the matter; (ii) either—*
      - (aa) the director had no material personal financial interest in the subject matter of the decision, and had no reasonable basis to know that any related person had a personal financial interest in the matter; or*
      - (bb) the director complied with the requirements of section 75 with respect to any interest contemplated in subparagraph (aa); and*
    - (iii) the director made a decision, or supported the decision of a committee or the board, with regard to that matter, and the director had a rational basis for believing, and did believe, that the decision was in the best interests of the company; and*
  - (b) is entitled to rely on—*
    - (i) the performance by any of the persons—*
      - (aa) referred to in subsection (5); or*

*(bb) to whom the board may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law; and*

*(ii) any information, opinions, recommendations, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons (iii) specified in subsection (5).*

*(5) To the extent contemplated in subsection (4) (b), a director is entitled to rely on—*

*(a) one or more employees of the company whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;*

*(b) legal counsel, accountants, or other professional persons retained by the company, the board or a committee as to matters involving skills or expertise that the director reasonably believes are matters—*

*(i) within the particular person's professional or expert competence; or*

*(ii) as to which the particular person merits confidence; or*

*(c) a committee of the board of which the director is not a member unless the director has reason to believe that the actions of the committee do not merit confidence.*

#### **ANNEXURE B:**

#### **Section 69 Companies Act, 2008 - Ineligibility and disqualification directors**

- (1) In this section, "director" includes an alternate director, and— (a) a prescribed officer; or (b) a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board.*
- (2) A person who is ineligible or disqualified, as set out in this section, must not— (a) be appointed or elected as a director of a company, or consent to being appointed or elected as a director; or (b) act as a director of a company.*
- (3) A company must not knowingly permit an ineligible or disqualified person to serve or act as a director.*
- (4) A person who becomes ineligible or disqualified while serving as a director of a company ceases to be entitled to continue to act as a director immediately, subject to section 70 (2).*
- (5) A person who has been placed under probation by a court in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984), must not serve as a director except to the extent permitted by the order of probation.*
- (6) In addition to the provisions of this section, the Memorandum of Incorporation of a company may impose— (a) additional grounds of ineligibility or disqualification of directors; or (b) minimum qualifications to be met by directors of that company.*

- (7) A person is ineligible to be a director of a company if the person— (a) is a juristic person; (b) is an unemancipated minor, or is under a similar legal disability; or (c) does not satisfy any qualification set out in the company's Memorandum of Incorporation.
- (8) A person is disqualified to be a director of a company if— (a) a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or (b) subject to subsections (9) to (12), the person— (i) is an unrehabilitated insolvent; (ii) is prohibited in terms of any public regulation to be a director of the company; (iii) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or (iv) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence— (aa) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing, or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); or (bb) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or (cc) under this Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012, Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2004 (Act No. 33 of 2004) or the Tax Administration Act, 2011 (Act No. 28 of 2011); or (v) when a person is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution.”;
- (9A) A disqualification in terms of subsection (8)(b)(v) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.
- (9) A disqualification in terms of subsection (8)(b)(iii) or (iv) ends at the later of— (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or (b) at the end of one or more extensions, as determined by a court from time to time, on application by the Commission in terms of subsection (10).
- (10) At any time before the expiry of a person's disqualification in terms of subsection 8)(b)(iii) or (iv)— (a) the Commission may apply to a court for an extension contemplated in subsection (9)(b); and (b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.
- (11) A court may exempt a person from the application of any provision of subsection 8)(b).

*(11 A) The Registrar of the Court must, upon- (a) the issue of a sequestration order;*

*(b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or*

*(c) a conviction for an offence referred in subsection (8)(b)(iv), send a copy of the relevant order or particulars of the conviction, as the case may be, to the Commission.*

*(11 B) The Commission must notify each company which has as a director to whom the order or conviction relates, of the order or conviction.*