

Republic of South Africa
Companies Act, No 71 of 2008 as amended

MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY

PROUDLY SOUTH AFRICAN (NPO)

Registration No.: 2001/021636/08

This Memorandum of Incorporation was adopted by Special Resolution passed on **[TO BE INSERTED ONCE A SPECIAL RESOLUTION HAS BEEN PASSED]**, a copy of which was filed together with the notice of amendment in substitution for the memorandum of association and the articles of association of the Company (which were the constitutional documents of the Company in terms of the Companies Act No. 61 of 1973).

1. **INTERPRETATION**

In this MOI, -

- 1.1. words that are defined in the Companies Act (which are contained in **Schedule 1** for easy reference but which do not form part of this MOI for purposes of interpretation) but not defined in this MOI will bear the same meaning in this as in the Companies Act. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires –
 - 1.2.1. **"Address"** shall include Electronic Address, business, residential or postal or any other address furnished by the Member to the Company;
 - 1.2.2. **"Companies Act"** means the Companies Act, No 71 of 2008, as amended or any legislation which replaces it;
 - 1.2.3. **"Company"** means **PROUDLY SOUTH AFRICAN** or by whatever other name it may be known from time to time;
 - 1.2.4. **"Deliver"** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 26 (*Notices*) and the Companies Act;
 - 1.2.5. **"Effective Date"** means the date on which the Companies Act came into operation, namely 1 March 2012;
 - 1.2.6. **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Member;
 - 1.2.7. **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Schedule 2**) which shall apply not only to Directors and Alternate Directors but also to members of Board committees and Prescribed Officers and the secretary of the Company;
 - 1.2.8. **"Member"** means the four constituencies of NEDLAC who (in terms of the Companies Act) holds membership in, and specified rights in respect of the Company;
 - 1.2.9. **"Members Register"** means the register of Members required to be kept in terms of section 24(4) of the Companies Act;
 - 1.2.10. **"MOI"** means this Memorandum of Incorporation;
 - 1.2.11. **"NEDLAC"** means the National Economic Development and Labour Council;
 - 1.2.12. **"Regulations"** means regulations published pursuant to the Companies Act;
 - 1.2.13. **"Round Robin Resolution"** means a resolution passed other than at a –
 - 1.2.13.1. Members Meeting, which –
 - 1.2.13.1.1. was submitted for consideration to the Persons entitled to exercise Voting Rights in relation to the resolution; and
 - 1.2.13.1.2. was voted on by the requisite percentage of the Persons entitled to vote contemplated in clause 13 by signing a resolution in counterparts,

and includes Written polling of Persons entitled to vote regarding the election of Directors;

1.2.13.2. meeting of Directors, in respect of which, subject to clause 23.9, all the Directors being not less than a quorum of Directors, voted in favour by signing in Writing a resolution in counterparts;

1.2.14. **"Writing"** includes Electronic Communication but as regards any Member entitled to vote, only to the extent that such Member has notified the Company of an Electronic Address;

- 1.3. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4. references to Members entitled to vote Present at a Meeting or acting in person shall include juristic persons represented by duly authorised representatives or acting in the manner prescribed in the Companies Act;
- 1.5. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8. if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.9. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

2. **CALCULATION OF BUSINESS DAYS**

When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by —

- 2.1. excluding the day on which the first such event occurs;
- 2.2. including the day on or by which the second event is to occur; and
- 2.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 2.1 and 2.2 respectively.

3. **NON-PROFIT COMPANY**

The Company is a Non-Profit Company as it is:

- 3.1. incorporated for a public benefit or other object as required by item 1(1) of Schedule 1 to the Companies Act;
- 3.2. consistent with the principles set out in items 1(2) to 1(9) of Schedule 1 to the Companies Act;
- 3.3. a public benefit organisation as contemplated in section 30 of the Income Tax Act, No 58 of 1962, as amended; and

Document last saved: 06/03/2018 03:16 pm

- 3.4. is prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of carrying out its stated objects) and is required to solely utilise its funds for the purpose that it has been established.

4. OBJECTS OF THE COMPANY

The objects of the company shall be to:

- 4.1. promote the acquisition and utilisation of South African products and services;
- 4.2. conduct consumer education programmes regarding such products and services;
- 4.3. promote national pride, patriotism and social cohesion through the provision of a country-of-origin brand that effectively identifies, differentiates and promotes local companies, their products and services which meet the Company's criteria in respect of local content, high quality, fair labour practices and environmental responsibility;
- 4.4. create a renowned quality assurance system whereby South African providers of products and services who meet specified standards and criteria would:
 - 4.4.1 receive accreditation from the company; and
 - 4.4.2 be authorised to mark such products and services with the Proudly South African's registered trademark

5. CONDITIONS

- 5.1. The Company :
 - 5.1.1. must apply all of its assets and income, however derived, to advance its stated objects, as set out in its MOI; and
 - 5.1.2. subject to clause 5.1.1, may -
 - 5.1.2.1. acquire and hold securities issued by a profit company; or
 - 5.1.2.2. directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 5.2. The Company shall not accept a donation that is revocable at the instance of the donor, other than a material failure to conform to the designated purpose and conditions of such donation, including any misrepresentation regarding the tax deductibility thereof. Provided that a donor, may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 5.3. The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether 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 -
 - 5.3.1. as reasonable -
 - 5.3.1.1. remuneration for goods delivered or services rendered to, or at the direction of, the Company; or
 - 5.3.1.2. payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;

Document last saved: 06/03/2018 03:16 pm

5.3.2. as a 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; or

5.3.3. as a 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

5.3.4. in respect of any legal obligation binding on the Company

subject always to the requirement that any such distribution must not directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company.

6. MEMBERSHIP

6.1. For purposes of this MOI, the Members of the Company shall consist of the constituencies of NEDLAC comprising of the Government of the Republic of South Africa, Organized Labour, Organized Business and the Community Constituencies. Any Person who makes a written application for purposes of joining the Proudly South African campaign and whose application is accepted by the Company shall become a Commercial Affiliate of the Company. For the sake of clarity, Members referred to herein are members of the Company as per the requirements of the Companies Act.

6.2. A Member shall *ipso facto* cease to be a Member of the company –

6.2.1. if such :-

6.2.1.1. Member ceases to exist; or

6.2.1.2. Member tenders Written notice of its resignation as a Member to the Directors; or

6.2.1.3. Member's estate is surrendered or sequestrated, whether voluntarily or compulsorily; or

6.2.1.4. Member commits any act of insolvency; or

6.2.1.5. Member is removed by Ordinary Resolution of the Members; or

6.2.1.6. Member neglects to attend 3 (three) successive general meetings of the Company, without prior leave of absence of the Board, unless reasonable grounds for such failure be placed before the Board; or

6.2.1.7. Member's membership is terminated by the Board on reasonable grounds and the Board furnishes such Member with Written notice of termination;

7. POWERS AND CAPACITY OF THE COMPANY

The Company has the powers and capacity of an Individual save to the extent set out in the Companies Act and Regulations, as well as the limitations stated elsewhere in this MOI. Notwithstanding the omission from this MOI or any provision to that effect, the Company may do anything which the Companies Act empowers a Non-Profit Company to do.

8. AMENDMENTS TO THE MOI

8.1. Save for correcting errors substantiated as such from objective evidence or which are self evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Company's web site, if any.

Document last saved: 06/03/2018 03:16 pm

- 8.2. A copy of any amendment to the MOI must be submitted to the Commissioner: South African Revenue Services.

9. THE MAKING OF RULES

The Board shall be entitled to approve of the rules of the Company.

10. MEMBERS REGISTER

- 10.1. The Company must maintain a Members Register, in accordance with the provisions of section 24(4) of the Companies Act.
- 10.2. The Company shall cause the Members Register to reflect –
 - 10.2.1. the names and identity numbers or passport number of the Members;
 - 10.2.2. the Member's business, residential or postal Address;
 - 10.2.3. the Members' Electronic Addresses who have furnished them;
 - 10.2.4. the date on which the person became a Member of the Company and if applicable, the date on which such Member ceased to be a Member of the Company; and
 - 10.2.5. any other information prescribed in terms of the Companies Act from time to time.
- 10.3. The Company shall not be bound to enter any person in the Members Register until that person gives the Company an Address for entry on the Members Register.

11. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

- 11.1. The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 11.2. The Company must maintain adequate records of all revenue received from donations, grants and fees (if any), or in terms of any funding contracts or arrangements with any party or Person for a period of at least 5 (five) years.
- 11.3. The Company shall prepare its Financial Statements in accordance with the applicable Regulations to the Companies Act.
- 11.4. The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the Regulations, the documents which the Members are entitled to inspect and take copies of (being the MOI, amendments to the MOI, records in respect of Directors, Accounting Records required to be maintained by the Company, reports to Annual General Meetings, annual Financial Statements, notices and minutes of Members Meetings, communications generally to Members, the Members Register), shall be open to inspection by Members not being Directors. In addition the Members have rights to information regarding Directors declarations of interests.
- 11.5. Apart from the Members, no other Person shall be entitled to inspect any of the documents of the Company (other than the Members Register) unless required by law and or expressly authorised by the Directors or by Ordinary Resolution.
- 11.6. The Company shall notify the Members of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Member demands a copy of the annual Financial Statements, the Company shall make same available to such Member free of charge.

12. **AUDITOR**

- 12.1. The Company shall appoint an Auditor at its Annual General Meeting provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless –
 - 12.1.1. the retiring Auditor is –
 - 12.1.1.1. no longer qualified for appointment;
 - 12.1.1.2. no longer willing to accept the appointment, and has so notified the Company; or
 - 12.1.1.3. required to cease serving as Auditor, in terms of section 92 of the Companies Act;
 - 12.1.2. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.
- 12.2. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2) of the Companies Act, provided that –
 - 12.2.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;
 - 12.2.2. if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated auditor until after the expiry of at least 2 (two) further financial years.
- 12.3. The Auditor –
 - 12.3.1. has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;
 - 12.3.2. is entitled to –
 - 12.3.2.1. attend any Members Meeting;
 - 12.3.2.2. receive all notices of and other communications relating to any Members Meeting; and
 - 12.3.2.3. be heard at any Members Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions;
 - 12.3.3. may not perform any services for the Company that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act.
- 12.4. If a vacancy arises in the office of Auditor, the Board –
 - 12.4.1. must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and

- 12.4.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company.

If, by comparison with the membership of a firm at the time of its latest appointment, less than $\frac{1}{2}$ (one half) of the members remain after a change in the composition of the members, that change constitutes the resignation of the firm as Auditor of the Company, giving rise to a vacancy.

- 12.5. Before making an appointment in terms of clause 12.4 the Board may proceed to make an appointment of a Person.
- 12.6. The provisions of clauses 25.4 and 25.5 apply *mutatis mutandis* to the Auditor.

13. **MEMBERS MEETINGS AND ROUND ROBIN RESOLUTIONS CONTEMPLATED IN CLAUSE 1.2.13.1**

- 13.1. The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –
- 13.1.1. presentation of –
- 13.1.1.1. the Directors' report;
- 13.1.1.2. Audited Financial Statements for the immediately preceding financial year;
- 13.1.2. election of Directors, to the extent required by the Companies Act or the MOI;
- 13.1.3. appointment of an Auditor for the ensuing year;
- 13.1.4. any matters raised by Members, on 30 days prior notice to the Company.
- 13.2. The Company shall, as determined by the Board, either –
- 13.2.1. hold a Members Meeting in order to consider one or more resolutions; or
- 13.2.2. as regards such resolution/s that could be voted on at a Members Meeting, other than an Annual General Meeting, instead require them to be dealt with by Round Robin Resolution contemplated in clause 1.2.13.1.
- 13.3. Within 10 (ten) Business Days after a Round Robin Resolution is adopted, the Company must Deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the Round Robin Resolution.
- 13.4. A Company must hold a Members Meeting or put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.13.1 -
- 13.4.1. at any time that the Board is required by the Companies Act or the MOI to refer a matter to Members entitled to vote for decision;
- 13.4.2. whenever required to fill a vacancy on the Board.
- 13.5. Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Members Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.

Document last saved: 06/03/2018 03:16 pm

- 13.6. The Board may, convene a Members Meeting or put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.13.1. A Members Meeting must be convened or the Board must put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.13.1 if one or more Written and signed demands for such a Members Meeting or Round Robin Resolution is/are delivered to the Company, and —
 - 13.6.1. each such demand describes the specific purpose for which the Members Meeting is proposed; and
 - 13.6.2. in aggregate, demands for substantially the same purpose are made and signed by the Members at the earliest time specified in any of those demands, of at least 51% (fifty one per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Members Meeting.
- 13.7. Round Robin Resolutions contemplated in clause 1.2.13.1, will be passed if signed by Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members Meeting.
- 13.8. Every Members Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Members Meeting entirely by Electronic Communication, or to provide for participation in a Members Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Members Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Members Meeting, as set out in section 63(2) of the Companies Act, is not limited or restricted.
- 13.9. A Members Meeting shall be called on at least 15 (fifteen) Business Days' notice Delivered by the Company (and for this purpose clause 26.3 shall not apply) to all Members entitled to vote or otherwise entitled to receive notice.
- 13.10. The Company may call a Members Meeting with less notice than required by clause 13.9, but such a Members Meeting may proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda -
 - 13.10.1. is Present at the Members Meeting; and
 - 13.10.2. votes to waive the required minimum notice of the Members Meeting.
- 13.11. A notice of a Members Meeting must be in writing, in plain language and must include -
 - 13.11.1. the date, time and place for the Meeting, and the Record Date for the Meeting;
 - 13.11.2. the general purpose of the Meeting, and any specific purpose contemplated in clause 13.1, if applicable;
 - 13.11.3. in the case of the Annual General Meeting a summarised form of the financial statements to be presented and directions for obtaining a copy of the complete annual financial statements for the preceding financial year;
 - 13.11.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
- 13.12. A Members Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 13.13, only if every Person who is entitled to exercise Voting Rights in respect of each item on the agenda of the Members Meeting is present at the Members Meeting and votes to approve the ratification of the defective notice.

Document last saved: 06/03/2018 03:16 pm

- 13.13. If a Material defect in the form or manner of giving notice of a Members Meeting relates only to one or more particular matters on the agenda for the Members Meeting -
 - 13.13.1. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
 - 13.13.2. the Members Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 13.14. An immaterial defect in the form or manner of Delivering notice of a Members Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Member to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Members Meeting.
- 13.15. Business may be transacted at any Members Meeting only while a quorum is present.
- 13.16. The quorum shall be sufficient Persons present at the Members Meeting to exercise, in aggregate, at least 51% (fifty one percent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the Members Meeting.
- 13.17. A matter to be decided at the Members Meeting may not begin to be considered unless sufficient Persons are present at the Members Meeting to exercise, in aggregate, at least 51% (fifty one percent) of all of the Voting Rights that are entitled to be exercised on that matter at the time the matter is called on the agenda for the Members.
- 13.18. If within 30 (thirty) minutes from the time appointed for the Members Meeting to commence, a quorum is not present, the Members Meeting shall be postponed, without motion, vote or further notice, subject to clause 13.21, for 1 (one) week to the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a Saturday, Sunday or public holiday, and if at such adjourned Members Meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the Members Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 13.19. A Members Meeting, or the consideration of any matter being debated at the Members Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights —
 - 13.19.1. held by all of the Persons who are present at the Members Meeting at the time; and
 - 13.19.2. that are entitled to be exercised on at least one matter remaining on the agenda of the Members Meeting, or on the matter under debate, as the case may be.

Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Members), as agreed at the Members Meeting.
- 13.20. A Members Meeting may not be adjourned beyond 120 (one hundred and twenty) Business Days after the Record Date.
- 13.21. No further notice is required to be Delivered by the Company of a Members Meeting that is postponed or adjourned as contemplated in clause 13.18, unless the location for the Members Meeting is different from -
 - 13.21.1. the location of the postponed or adjourned Members Meeting; or
 - 13.21.2. a location announced at the time of adjournment, in the case of an adjourned Members Meeting.
- 13.22. After a quorum has been established for a Members Meeting, or for a matter to be considered at a Members Meeting, the Members Meeting may continue, or the matter may

Document last saved: 06/03/2018 03:16 pm

be considered, so long as at least 1 (one) Person with Voting Rights entitled to be exercised at the Members Meeting, or on that matter, is Present at the Members Meeting.

- 13.23. The chairperson, if any, of the Board shall preside as chairperson at every Members Meeting. If there is no such chairperson, or if at any Members Meeting he is not present within 30 (Thirty) minutes after the time appointed for holding the Members Meeting or is unwilling to act as chairperson, the Persons entitled to vote which are Present shall select a Director present at the Members Meeting, or if no Director be present at the Members Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Members Meeting.
- 13.24. At any Members Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by –
- 13.24.1. not less than 2 (two) Persons having the right to vote on that matter; or
- 13.24.2. a Person/s entitled to exercise not less than 1/10th (one tenth) of the total Voting Rights entitled to vote on that matter,
- and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Members Meeting or adjourned Members Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Members Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Members Meeting, whose decision shall be final and conclusive.
- 13.25. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the Members Meeting at which the poll was demanded. Scrutineers may be appointed by the chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the chairperson of the Members Meeting, shall be deemed to be the resolution of the Members Meeting at which the poll is demanded.
- 13.26. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Members Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 13.27. A poll shall be taken forthwith. The demand for a poll shall not prevent the continuation of a Members Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
- 13.28. Every resolution of Members is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the Voting Rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of at least 75% (seventy five per cent) of the Voting Rights exercised on the resolution.
- 13.29. On a show of hands and on a poll a Person entitled to vote Present at the Meeting shall have only 1 (one) vote.
- 13.30. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent

Document last saved: 06/03/2018 03:16 pm

that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.

- 13.31. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company immediately prior to the Members Meeting, before the proxy exercises any rights of the Member entitled to vote at a Members Meeting.
- 13.32. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a standard form of proxy upon request by a Member entitled to vote.
- 13.33. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.

14. **RECORD DATE**

- 14.1. If the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.
- 14.2. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –
 - 14.2.1. in the case of a Members Meeting, the latest date by which the Company is required to Deliver to Members entitled to vote, notice of that Members Meeting; or
 - 14.2.2. the date of the action or event, in any other case.
- 14.3. The Company must publish a notice of a Record Date for any matter by –
 - 14.3.1. Delivering a copy to each Member; and
 - 14.3.2. posting a conspicuous copy of the notice –
 - 14.3.2.1. at its principal office;
 - 14.3.2.2. on its web-site, if it has one.

15. **ELECTION OF DIRECTORS AND ALTERNATE DIRECTORS AND CASUAL VACANCIES**

- 15.1. The number of Directors shall be 3 (three) per Member plus an independent Non Executive Chairperson, the Chief Executive Officer, Chief Financial Officer, and the Executive Director of NEDLAC. Each of the Directors and the Alternate Directors, other than a Director contemplated in clause 15.7, shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), in accordance with clause 15.4, to serve for a term of 3 (three) years as a Director or Alternate Director.
- 15.2. There are no general qualifications prescribed by the Company for a Person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act.
- 15.3. No Director shall be entitled to appoint any Person as an Alternate Director to himself.
- 15.4. Directors and Alternate Directors will be elected by the Members, by Ordinary Resolution.
- 15.5. No Person shall be elected as a Director or Alternate Director, if he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a

Document last saved: 06/03/2018 03:16 pm

Director or Alternate Director. A Person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.

- 15.6. No election of a Director shall take effect until he has delivered to the Company a Written consent to serve.
- 15.7. Any casual vacancy occurring on the Board may be filled by the Board, but the Individual so appointed shall cease to hold office at the termination of the first Members Meeting to be held after the appointment of such Individual as a Director unless he is elected at such Members Meeting or by Round Robin Resolution contemplated in clause 1.2.13.1.
- 15.8. The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as a quorum, the continuing Directors or Director may act only for the purpose of summoning a Members Meeting.
- 15.9. If there is no Director able and willing to act, then any Member entitled to exercise Voting Rights in the election of a Director may convene a Members Meeting for the purpose of appointing Directors.

16. RETIREMENT OF DIRECTORS IN ROTATION

16.1. At the Annual General Meeting held in each year thereafter -

16.1.1. 1/3 (one-third) of the Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one-third) shall retire from office, provided that in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as the Chief Executive Officer or any other executive Director for a fixed period in his/her contract provided that he is not subject to retirement during that fixed period. The Directors so to retire at each Annual General Meeting, after the first Annual General Meeting, shall be those who have been longest in office since their last election, for which purposes the length of time a Director has been in office shall be computed from the date of his last election. As between Directors of equal seniority, the Directors to retire shall, in the absence of agreement, be selected from among them by lot; and

16.1.2. any Director holding office for an aggregate period in excess of 9 (nine) years since his first election or appointment, shall retire from office at such Meeting (notwithstanding that he may have retired from office at the previous Annual General Meeting either in terms of clause 16.1.2 or 16.2).

16.2. A retiring Director shall act as a Director throughout the Meeting at which he retires. Notwithstanding anything herein contained, in determining the number of Directors to retire no account shall be taken of any Director who has been appointed as the Chief Executive Officer or any other executive Director for a fixed period and his contract provides that he is not subject to retirement during that fixed period.

16.3. Retiring Directors shall be eligible for re-election. No person other than a Director retiring at the Meeting shall, unless recommended by the Directors for election, be eligible for election to the office of a Director at any Annual General Meeting unless, not less than 14 (fourteen) days nor more than 21 (twenty one) days before the day appointed for the issue of the notice for the Meeting, there shall have been to the company secretary notice in Writing by some Holder duly qualified to be present and vote at the Meeting for which such notice is given of the intention of such Holder to propose such Person for election and also notice in Writing signed by the Person to be proposed of his willingness to be elected. If at any Annual General Meeting, the place of any retiring Director is not filled, he shall if willing continue in office until the dissolution of the Annual General Meeting in the next year, and so on from year to year until his place is filled, continue in office unless it shall be determined at such Meeting not to fill such vacancy.

17. **CESSATION OF OFFICE AS DIRECTOR OR ALTERNATE DIRECTOR**

A Director or Alternate Director shall cease to hold office as such –

- 17.1. immediately he becomes Ineligible or Disqualified or the Board resolves to remove him on such basis, and in the latter case the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);
- 17.2. when his term of office expires;
- 17.3. when he dies;
- 17.4. when he resigns by Written notice to the Company;
- 17.5. if there are more than 3 (three) Directors in office and if the Board determines that he has become incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);
- 17.6. if he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the Company;
- 17.7. if he is removed by Ordinary Resolution;
- 17.8. if there are more than 3 (three) Directors in office and if he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he shall be suspended);
- 17.9. he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally;
- 17.10. he is removed by the party which nominated him to serve as a Director by Written notice by that party to the Company; or
- 17.11. he is otherwise removed in accordance with any provisions of this MOI.

18. **REMUNERATION OR REIMBURSEMENT**

The remuneration of the Directors as determined by the directors from time to time shall be market related and subject always to the provisions of clause 19. The Directors may also be paid all travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as Directors including those of attending and travelling to and from meetings of the Directors or any committee of the Directors or at any meeting of Members of the Company.

19. **FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES**

The Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related company, or to a Person related to any such Director, other than a transaction if it –

- 19.1. is in the ordinary course of the Company's business and for fair value;
- 19.2. constitutes an accountable advance to meet-

Document last saved: 06/03/2018 03:16 pm

19.2.1. legal expenses in relation to a matter concerning the Company; or

19.2.2. anticipated expenses to be incurred by the Person on behalf of the Company;

19.3. is to defray the Person's expenses for removal at the Company's request; or

19.4. is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

20. GENERAL POWERS AND DUTIES OF DIRECTORS

20.1. The Directors shall exercise their powers subject to the provisions of this MOI and the Company's Board Charter (as determined from time to time).

21. BOARD COMMITTEES

21.1. The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may not include Persons who are not Directors.

21.2. No Person shall be appointed as a member of a Board committee, if he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

21.3. The following Board Committees shall be established:

- Audit and Risk Committee
- Remunerations Committee
- Finance Committee
- Social and Ethics Committee
- Marketing, Communications and Membership
- Nominations Committee

21.4. A member of a Board committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.

21.5. Committees of the Board may consult with or receive advice from any Person.

21.6. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

22. PERSONAL FINANCIAL INTERESTS OF DIRECTORS

22.1. For the purposes of this clause 22 (*Personal Financial Interests of Directors*), "Director" includes an Alternate Director, a Prescribed Officer, and 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.

22.2. At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.

Document last saved: 06/03/2018 03:16 pm

- 22.3. If a Director has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director -
- 22.3.1. must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
 - 22.3.2. must disclose to the meeting any Material information relating to the matter, and Known to the Director;
 - 22.3.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
 - 22.3.4. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 22.3.2 or 22.3.3;
 - 22.3.5. must not take part in the consideration of the matter, except to the extent contemplated in clauses 22.3.2 or 22.3.3;
 - 22.3.6. while absent from the meeting in terms of this clause 22.3:
 - 22.3.6.1. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
 - 22.3.6.2. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - 22.3.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 22.4. If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.
- 22.5. A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if -
- 22.5.1. it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clauses 22 (*Personal Financial Interests of Directors*); or
 - 22.5.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

23. PROCEEDINGS OF DIRECTORS

- 23.1. A Director authorised by the Board -
- 23.1.1. may, at any time, summon a meeting of the Directors; and
 - 23.1.2. must call a meeting of the Directors if required to do so by at least 3 (three) Directors.

Document last saved: 06/03/2018 03:16 pm

- 23.2. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.
 - 23.3. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
 - 23.4. Unless otherwise resolved by the Directors, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
 - 23.5. The quorum for a Directors' meeting is the majority of the Directors consisting of 50% plus 1 of the board.
 - 23.6. The Directors may elect a chairperson of their meetings and determine the period for which he is to hold office; but if no such chairperson is elected, or if at any meeting the chairperson is not present within 30 (thirty) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairperson of the meeting.
 - 23.7. Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
 - 23.8. In the case of a tied vote the chairperson may not cast a deciding vote even if the chairperson did not initially have or cast a vote and the matter being voted on fails.
 - 23.9. The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
 - 23.9.1. any declaration given by notice or made by a Director as required by clause 22 (*Personal Financial Interests of Directors*);
 - 23.9.2. every resolution adopted by the Board.
 - 23.10. Resolutions adopted by the Board –
 - 23.10.1. must be dated and sequentially numbered; and
 - 23.10.2. are effective as of the date of the resolution, unless the resolution states otherwise.
 - 23.11. Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
 - 23.12. A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director in South Africa who is able to receive notice, has received notice of the matter to be decided upon. One or more Alternate Directors shall be entitled to sign a Round Robin Resolution if one or more Directors are not present in South Africa to sign, and without his/their vote/s the requisite majority cannot be achieved.
24. **PRESCRIBED OFFICERS**
- 24.1. No Person shall hold office as a Prescribed Officer, if he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such

Document last saved: 06/03/2018 03:16 pm

office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

- 24.2. A Prescribed Officer shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.

25. **APPOINTMENT OF SECRETARY**

- 25.1. The Directors may appoint the secretary from time to time, who –

25.1.1. shall be a permanent resident of South Africa and remain so while serving as secretary; and

25.1.2. shall have the requisite knowledge of, or experience in, relevant laws; and

25.1.3. may be a juristic Person subject to the following -

25.1.3.1. every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;

25.1.3.2. at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 25.1.1 and 25.1.2.

- 25.2. Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Directors consider to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a casual vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 25.1.3.

- 25.3. If at any time a Juristic Person or partnership holds office as company secretary of the Company –

25.3.1. the Juristic Person or partnership must immediately notify the Directors if the Juristic Person or partnership no longer satisfies the requirements of clause 25.1.3, and is regarded to have resigned as company secretary upon giving that notice to the Company;

25.3.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 25.1.3, until the Company has received a notice contemplated in clause 25.3.1; and

25.3.3. any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 25.1.3 at the time of that action.

- 25.4. The company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.

- 25.5. If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the financial year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that financial year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

26. **NOTICES**

- 26.1. The Company may give notices, documents, records or notices of availability of the foregoing by personal delivery to the Member or by sending them prepaid through the post or by transmitting them by telegram or telefax.
- 26.2. Any Member who/which has furnished an Electronic Address to the Company, by doing so –
 - 26.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him; and
 - 26.2.2. confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
- 26.3. Any notice required to be given by the Company to the Members and not expressly prohibiting the provisions of this clause from applying, shall be sufficiently given (subject to giving a notice of availability in accordance with clause 26.1 or 26.2), if given by posting it on the Company's web site, if any, until at least the date when the event to which the notice refers occurs.
- 26.4. Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with the provisions of this MOI.
- 26.5. A Member shall be bound by every notice. The Company shall not be bound to enter any Person in the Members Register until that Person gives the Company an address for entry on the Members Register.
- 26.6. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2 (*Calculation of Business Days*)), the provisions of clause 2 (*Calculation of Business Days*) shall also be applied.
- 26.7. As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

27. **INDEMNITY**

- 27.1. For the purposes of this clause 27 (*Indemnity*), "Director" includes a former Director, an Alternate Director, a Prescribed Officer, 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.
- 27.2. The Company may -
 - 27.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation;

- 27.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 27.2.3. directly or indirectly indemnify a Director for –
 - 27.2.3.1. any liability, other than in respect of -
 - 27.2.3.1.1. any liability arising in terms of sections 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or
 - 27.2.3.1.2. any fine contemplated in clause 27.2.1;
 - 27.2.3.2. any expenses contemplated in clause 27.2.2, irrespective of whether it has advanced those expenses, if the proceedings -
 - 27.2.3.2.1. are abandoned or exculpate the Director; or
 - 27.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 27.2.3.1.
- 27.3. The Company may purchase insurance to protect -
 - 27.3.1. a Director against any liability or expenses contemplated in clause 27.2.2 or 27.2.3; or
 - 27.3.2. the Company against any contingency including but not limited to -
 - 27.3.2.1. any expenses:
 - 27.3.2.1.1. that the Company is permitted to advance in accordance with clause 27.2.2; or
 - 27.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 27.2.3.2; or
 - 27.3.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 27.2.3.1.
- 27.4. The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 75 of the Companies Act.

28. **WINDING UP OR DISSOLUTION**

Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, after making provision for the costs of dissolving the Company, distribute the net value of the Company to any similar public benefit organisation which has been approved by the Commissioner: South African Revenue Service in terms of section 30 of the Income Tax Act, 58 of 1962 or any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the aforementioned Act, which has as its sole object the carrying on of any public benefit activity and which has similar objects to those of the Company.

Schedule 1 – Definitions in the Companies Act

"**accounting records**" means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;¹

"**alternate director**" means a person elected or appointed to serve, as the occasion requires, as a member of the board of a company in substitution for a particular elected or appointed director of that company;

"**annual general meeting**" means the meeting of a public company required by section 61(7);

"**audit**" has the meaning set out in the Auditing Profession Act, but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

"**Auditing Profession Act**" means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

"**auditor**" has the meaning set out in the Auditing Profession Act;

"**board**" means the board of directors of a company;

"**business days**" has the meaning determined in accordance with section 5(3);

"**Commission**" means the Companies and Intellectual Property Commission established by section 185;

"**Commissioner**" means the person appointed to or acting in the office of that name, as contemplated in section 189;

"**company**" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date —

- (a) was registered in terms of the —
 - (i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or
 - (ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of **Schedule 2**;
- (b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

"**consideration**" means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including—

- (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

"**director**" means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes the Chief Executive Officer of the Company, any person occupying the position of a director or alternative director, by whatever name designated;

¹ Regulation 25(3) contains requirements as to what the accounting records must include.

Document last saved: 06/03/2018 03:16 pm

"effective date", with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

"electronic communication" has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

"Electronic Communications and Transactions Act" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"exercise", when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

"ex officio director" means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation;

"financial statement" includes—

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

"holding company", in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);

"incorporator", when used—

- (a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or
- (b) with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;

"individual" means a natural person;

"inter-related", when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series;

"juristic person" includes—

- (a) a foreign company; and
- (b) a trust, irrespective of whether or not it was established within or outside the Republic;

"knowing", "knowingly" or "knows", when used with respect to a person, and in relation to a particular matter, means that the person either—

- (a) Had actual knowledge of the matter; or
- (b) Was in a position in which the person reasonably ought to have—
 - (i) had actual knowledge;

Document last saved: 06/03/2018 03:16 pm

- (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
- (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

"material", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is—

- (a) of consequence in determining the matter; or
- (b) might reasonably affect a person's judgement or decision-making in the matter;

"member", when used in reference to —

- (a) a close corporation, has the meaning set out in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
- (b) a non-profit company, means a person who holds membership in, and specified rights in respect of, that non-profit company, as contemplated in Schedule 1; or
- (c) any other entity, means a person who is a constituent part of that entity;

"nominee" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"non-profit company" means a company —

- (a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and
- (b) the income and property of which are not distributable to its incorporators, members, directors, officers or persons related to any of them except to the extent permitted by item 1(3) of Schedule 1; **"ordinary resolution"** means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8) —

- (a) at a shareholders meeting; or
- (b) by holders of the company's securities acting other than at a meeting, as contemplated in section 60;

"person" includes a juristic person;

"personal financial interest", when used with respect to any person—

- (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
- (b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

"prescribed officer" means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);

"present at a meeting" means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

"public company" means a profit company that is not a state-owned company, a private company or a personal liability company;

"record date" means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

Document last saved: 06/03/2018 03:16 pm

"registered auditor" has the meaning set out in the Auditing Profession Act;

"registered office" means the office of a company, or of an external company, that is registered as required by section 23;

"related", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to section (c);

"rules" and **"rules of a company"** means any rules made by a company as contemplated in section 15(3) to (5);

"special resolution" means—

- (a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10) -
 - (i) at a shareholders meeting; or
 - (ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

"subsidiary" has the meaning determined in accordance with section 3;

"voting power", with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;

"voting rights", with respect to any matter to be decided by a company, means—

- (a) the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or
- (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

"wholly-owned subsidiary" has the meaning determined in accordance with section 3(1)(b).

Schedule 2 – Ineligible / disqualified in terms of section 69 (7) and (8) of the Companies Act read with Regulation 39 (3)

1. A person is ineligible to be a Director if the Person –
 - 1.1. is a juristic person;
 - 1.2. is an unemancipated minor, or is under a similar legal disability; or
 - 1.3. does not satisfy any qualification set out in the MOI.
2. A person is disqualified to be a Director if –
 - 2.1. 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
 - 2.2. the Person –
 - 2.2.1. is an unrehabilitated insolvent;
 - 2.2.2. is prohibited in terms of any public regulation to be a Director;
 - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
 - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –
 - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
 - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
 - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).