



Republic of South Africa

Companies Act, 2008

**MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY**

Name of company: **SAVINGS AND INVESTMENT ASSOCIATION – SOUTH AFRICA NPC**

The shortened name of the Company is: **ASISA**

Registration No.: 2008/017776/08

This MOI was adopted by Special Resolution passed on 28 May 2019 in substitution for the existing memorandum of incorporation of the Company. 1<sup>st</sup> amendment – 26 August 2024 (approved by the ASISA Nominations Committee).

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## 1. INTERPRETATION

In this MOI:

- 1.1. words which are not otherwise defined in clause 1.2 below shall, if capitalised in the MOI, bear the same meaning in this MOI as in the Companies Act;
- 1.2. unless the context otherwise requires:
  - 1.2.1. "**Applicable Laws**" means all statutes, enactments, laws, ordinances, treaties, conventions, protocols, by-laws, rules, regulations, guidelines, notifications, notices, judgments, decrees, injunctions, writs or orders of any court, statutory or regulatory authority, tribunal, board or stock exchange, revenue authority and/or tax authority in any jurisdiction which, in the reasonable opinion of the Board, is relevant to the Industry from time to time;
  - 1.2.2. "**Board**" means the board of directors of the Company as constituted from time to time in terms of this MOI;
  - 1.2.3. "**Business Day**" means a day which is not a Saturday, Sunday or a public holiday in South Africa;
  - 1.2.4. "**Chief Executive Officer**" has the meaning ascribed thereto in clause 19.4;
  - 1.2.5. "**Chairperson**" means the chairperson of the Board, elected from time to time in accordance with clause 13.7 of this MOI;
  - 1.2.6. "**Commissioner**" means the commissioner for the South African Revenue Services appointed, or the acting commissioner designated, in terms sections 6 and 7 of the South African Revenue Services Act, 1997 (Act 34 of 1997), as such office may be changed and replaced from time to time;
  - 1.2.7. "**Companies Act**" means the Companies Act, 2008 (Act 71 of 2008), as amended or any legislation which replaces it;
  - 1.2.8. "**Company**" means the Savings and Investment Association - South Africa NPC (registration number 2008/017776/08), or by whatever other name it may be known from time to time;

- 1.2.9. **"Confidential Information"** includes, without limitation, all information pertaining to the Company's (or a Member Company's or another entity's) strategic, management, operational, technical, commercial, financial and business affairs, business plans and solutions, know-how, trade secrets, processes, specifications, client and personnel data, marketing and business information generally, and data in whatever form, and other information of whatever description that such entity has an interest in being kept confidential;
- 1.2.10. **"Conglomerate Group"** means a Group of Companies or other enterprises, which are Subsidiaries, or subject to the Control, of the same Holding Company or Controlling company/ies, or which are otherwise associated as providers of complementary financial products and services, including any juristic or other Connected Person in relation thereto;
- 1.2.11. **"Connected Person"** has the meaning ascribed thereto under section 1 of the Income Tax Act;
- 1.2.12. **"Control"** has the meaning ascribed thereto in section 2(2) of the Companies Act, and **"Controlled"** and **"Controlling"** have corresponding meanings;
- 1.2.13. **"Deliver"** or **"Delivery"** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 28 and the Companies Act;
- 1.2.14. **"Deputy Chairperson"** means the deputy chairperson of the Board, elected from time to time in accordance with clause 13.7 of this MOI;
- 1.2.15. **"Electronic Address"** means, in regard to Electronic Communication, any email address furnished to the Company by any Member Company;
- 1.2.16. **"Executive Committee"** means the committee to be appointed in accordance with clause 15 below, having the powers, duties and responsibilities with respect to the implementation of

- 1.2.17. organisational decisions as may be delegated to it by the Board from time to time;
- 1.2.18. "**General Meeting**" means any ordinary or extraordinary meeting of the Member Companies;
- 1.2.19. "**Income Tax Act**" means the Income Tax Act, 1962 (Act 58 of 1962), as amended;
- 1.2.20. "**Industry**" means the long-term insurance, savings and investment industry in South Africa;
- 1.2.21. "**Ineligible or Disqualified**" means, in respect of any Director, members of a Board Committee and/or Prescribed Officers, ineligible or disqualified as contemplated in the Companies Act;
- 1.2.22. "**Member Companies**" means registered members of the Company, and includes Voting Member Companies and Non-Voting Member Companies, and "**Member Company**" shall mean any one of them, as the context may indicate;
- 1.2.23. "**Member's Contribution**" has the meaning ascribed thereto in clause 11.7;
- 1.2.24. "**Membership**" means membership of the Company;
- 1.2.25. "**Members' Register**" has the meaning ascribed thereto in clause 11.3;
- 1.2.26. "**Membership Rules**" means the rules regulating the application for, and appointment of, Member Companies, and the suspension and/or termination of Membership, as at the date of adoption of the MOI being rules reflected in **Annexure A** hereto;
- 1.2.27. "**MOI**" means this Memorandum of Incorporation, together with any annexures thereto, as same may be amended from time to time;
- 1.2.28. "**Nominations Committee**" means the committee to be appointed in accordance with clause 14 below, having the powers, duties and responsibilities set out in this MOI and as may be determined by the Board;

- 1.2.29. **“Non-Voting Member Companies”** means the Member Companies who are recorded as Non-Voting Member Companies in the Members’ Register, and **“Non-Voting Member Company”** shall mean any one of them, as the context may indicate;
- 1.2.30. **“Present”** means, in relation to any Person entitled to Exercise any Voting Rights at General Meetings, that Person is:
- 1.2.30.1. present in person; or
- 1.2.30.2. represented by:
- 1.2.30.2.1. proxy; or
- 1.2.30.2.2. an individual authorised by a letter of representation or in such other manner as the Board may determine (in respect of a Shareholder which is a Juristic Person), it being recorded that the Senior Exec of the relevant Member Company will deemed to be so authorised; or
- 1.2.30.2.3. an agent appointed under a general or special power of attorney (in respect of any individual);
- 1.2.31. **“Prime Interest Rate”** means the prime overdraft rate of interest charged from time to time by the Company’s bankers from time to time, in respect of unsecured overdraft facilities, calculated and compounded monthly in arrear, as certified by the manager of any branch of that bank, whose appointment, designation, and authority need not be proved;
- 1.2.32. **“Regulations”** means regulations published pursuant to the Companies Act;
- 1.2.33. **“Relevant Regulator”** means any regulatory authority mandated or constituted in terms of Applicable Laws to govern any aspect of any business conducted in the Industry, as may be applicable in the context;

- 1.2.34. "**Rights**" means those rights granted to a particular category of Member Companies pursuant to this MOI and/or any additional rights granted to such category of Member Companies in terms of Applicable Laws;
- 1.2.35. "**Round Robin Resolution**" means a resolution passed other than at a meeting of the Member Companies or the Directors, as the case may be, being:
- 1.2.35.1. in the case of Member Companies, a resolution as contemplated in section 60 of the Companies Act; and
- 1.2.35.2. in the case of Directors, a resolution as contemplated in section 74 of the Companies Act;
- 1.2.36. "**Secretary**" means the secretary of the Company as appointed by the Board in accordance with clause 24;
- 1.2.37. "**Senior Exec**" means, in relation to any Member Company, the person contemplated in clause 13.2, from time to time; and
- 1.2.38. "**Voting Member Companies**" means the Member Companies who are recorded as Voting Member Companies in the Members' Register, and "**Voting Member Company**" shall mean any one of them, as the context may indicate;
- 1.3. all references to "Writing" in this MOI includes Electronic Communications, but in relation to Member Companies only to the extent that the relevant Member Company has notified the Company of its Electronic Address;
- 1.4. all references to "section(s)" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.5. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.6. when any number of days is prescribed in this MOI, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a non-Business Day, in which case the last day shall be the next succeeding Business Day.



- 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 this MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.9. if any provision is included in this MOI because it is compulsory to include such provision in terms of Applicable Laws, and the relevant provisions of such Applicable Laws change following the date of adoption of this MOI, then such provision of the MOI shall be deemed to be amended in the same manner as the changes to the relevant Applicable Laws; and
- 1.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## **2. NON-PROFIT COMPANY**

The Company is a Non-Profit Company with members and the provisions of Schedule 1 to the Companies Act shall apply to the Company.

## **3. MAIN PURPOSE AND OBJECTS OF THE COMPANY**

- 3.1. The main purpose of the Company is to establish an industry association for the purpose of serving, supporting and representing the various long-term insurance, savings, investment and related institutions in South Africa, as may be admitted to the Membership in accordance with this MOI.
- 3.2. The main objects of the Company are as follows:
  - 3.2.1. to serve, support and represent the Industry;
  - 3.2.2. to promote the Industry's development, growth, public standing, and the general society's confidence therein, by such means as may be deemed appropriate from time to time;

- 3.2.3. to actively consider and encourage transformation and social development throughout the Industry, by developing and participating in transformative projects and initiatives and pursuing the objectives of applicable black economic empowerment legislation; and
  - 3.2.4. to generally encourage a broad culture of responsible savings and investments within the context of a transformed, vibrant, and globally competitive economy.
- 3.3. In promoting the main objects referred to above and implementing its mandate on behalf of the Member Companies, the Company shall itself observe and promote the following guiding principles with respect to its operations, having regard to the best interest of the Industry and the general public:
- 3.3.1. the advancement of the principle of consumer sovereignty and freedom of choice for clients;
  - 3.3.2. the promotion of the operation of free markets and encourage fair competition in the provision of products and services;
  - 3.3.3. the full and effective disclosure of all fees, commissions, rebates and charges, and other material terms of contracts with clients;
  - 3.3.4. the avoidance of conflicts of interest with their clients;
  - 3.3.5. acting with integrity and the highest standards of ethics and good governance;
  - 3.3.6. neither claiming, nor accepting, fees or the reimbursement of costs without a service having been delivered, or a cost having been incurred, of appropriate value;
  - 3.3.7. the promotion of the inherent value and benefit of savings and investments, and the promotion of access to such products and services for all South Africans;
  - 3.3.8. ensuring that any proposals submitted to regulatory authorities for legal, regulatory or process changes, will encourage and promote fairness, balance, transparency and best Industry practice;

- 3.3.9. practising and promoting ethical and equitable behaviour by Member Companies;
- 3.3.10. seeking to contribute to the development of a strong national economy by encouraging savings and improving opportunities for achieving personal security and financial independence; and
- 3.3.11. seeking to resolve any differences or disputes with, or between, Member Companies, by acting at all times:
  - 3.3.11.1. in absolute good faith and integrity, adhering to these principles;
  - 3.3.11.2. in the best interest of clients; and
  - 3.3.11.3. in support of practices that encourage good governance.

#### **4. POWERS AND CAPACITY OF THE COMPANY**

- 4.1. The Company has the powers and capacity of an Individual, save for the following limitations and/or specific powers, which the Member Companies may rely upon against the Board, namely:
  - 4.1.1. the Company may not distribute *in specie* or in kind any of its assets among the Member Companies;
  - 4.1.2. the Company must apply all its assets and income, however derived, to advance the main objects of the Company as set out in this MOI;
  - 4.1.3. subject to clause 4.1.2, the Company may:
    - 4.1.3.1. acquire and hold securities issued by a profit company;
    - 4.1.3.2. directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects; and

- 4.1.4. the Company shall be entitled to:
- 4.1.4.1. form and have an interest in any other company or companies having the same or similar objects to the Company, for the purpose:
    - 4.1.4.1.1. of acquiring the undertaking, or all or any of the assets or liabilities of such other company or companies, or for any other purpose which may seem directly or indirectly calculated to benefit the Company and/or to promote and advance the main objects of the Company; and
    - 4.1.4.1.2. to transfer to any such other company or companies the undertaking of the Company, comprising all or any of its assets or liabilities;
  - 4.1.4.2. amalgamate, liaise, enter into joint ventures or partnerships and/or co-operate with any other companies, trusts or other legal entities having the same or similar objects to the Company;
  - 4.1.4.3. remunerate any person or persons in cash, or in kind, for services rendered in its formation or in the development or conduct of its activities, including payment of reasonable fees and charges for professional services rendered as aforesaid;
  - 4.1.4.4. make grants and donations in pursuance of its main objects, provided that no such grants or donations may be made to Member Companies or the Directors or to connected or related persons of the Directors; and
  - 4.1.4.5. pay staff salaries, pensions, and other benefits, and to establish pension and incentive schemes, in respect of its employees.

4.2. In addition to the powers and capacities of the Company as set out in clause 4.1 above, the following special conditions shall apply to the Company:

4.2.1. the Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any Incorporator or any Person who is a Member Company or Director, or person appointing a Director, except:

4.2.1.1. as reasonable:

4.2.1.1.1. remuneration for goods delivered or services rendered to, or at the direction of, the Company; or

4.2.1.1.2. payment of, or reimbursement for, expenses incurred to advance the main objects of the Company;

4.2.1.2. 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;

4.2.1.3. 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 the main object of the Company; or

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

4.3. Without limiting the generality of the a foregoing, but subject to any prohibition contained in this MOI, the Company may do anything which the Companies Act empowers a company to do.

## 5. AMENDMENTS TO THE MOI

5.1. The Board is empowered to correct errors in this MOI substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar

- 5.2. or similar defects) in accordance with section 17(1) of the Companies Act. All other amendments to this MOI shall be effected in accordance with section 16(1) of the Companies Act.
- 5.3. The Board shall publish a notice of any correction effected by the Board or amendment effected in accordance with section 16(1) of the Companies Act on the Company's web site or by any other method of publication as may be determined by the Board and shall file the notice of amendment to this MOI with the Commission.
- 5.4. Any provision of this MOI is void to the extent that it is inconsistent with, or purports to limit, set aside or negate the effect of section 159 of the Companies Act.

## **6. LIMITATION OF LIABILITY**

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

## **7. THE MAKING OF RULES**

The Board shall not be entitled to make Rules except with the approval by Special Resolution of the Voting Member Companies.

## **8. FINANCIAL YEAR**

The financial year of the Company shall commence on 1 January and terminate on 31 December in each year, as same may be changed from time to time.

## **9. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 9.1. The Board shall cause to be kept such Accounting Records as are prescribed by the Companies Act, in order to fairly present the state of affairs and business of the Company and to explain the transactions and financial position of its trade or business. The Accounting Records shall be accessible from the Company's Registered Office or at such other place or places as the Board may deem fit.
- 9.2. The Company shall prepare its Financial Statements in accordance with the provisions prescribed by the Companies Act and Applicable Laws and shall have its annual Financial Statements audited.

- 9.3. The Board 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 Member Companies 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 General Meetings, communications generally to Member Companies and the Members' Register), shall be open to inspection by Member Companies.
- 9.4. Apart from the Board or Member Companies, no other Person shall be entitled to inspect any of the documents of the Company (other than the Members' Register and the register of Directors) unless expressly authorised by the Board or by Ordinary Resolution.
- 9.5. The Company shall notify the Member Companies of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those annual Financial Statements. If a Member Company demands a copy of the annual Financial Statements, the Company shall make same available to such Member Company free of charge.

## **10. APPOINTMENT OF AUDITOR**

- 10.1. The Auditor shall be appointed by the Voting Member Companies at the General Meeting and such Auditor may be removed, and replaced, in accordance with the relevant provisions of the Companies Act.
- 10.2. If an annual General Meeting does not appoint or re-appoint an Auditor, the Board 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 such annual General Meeting.

## **11. MEMBERSHIP**

- 11.1. The minimum number of Voting Member Companies shall be 3 (three), and there shall be no limitation as to the maximum number of Voting Member Companies. There shall be no restriction on the minimum or maximum number of Non-Voting Members.

- 11.2. If, at any time, the number of Voting Member Companies remaining should fall below the minimum stipulated above, the remaining Member Companies shall determine whether or not it shall be in the best interest of the Company to be wound up, having due regard to Industry best practice and the remaining members of the Industry which the Company represents.
- 11.3. The Company shall from time to time keep a register of Member Companies ("**Members' Register**").
- 11.4. No Member Company shall be entitled to transfer his Membership to any other Person, or to alienate or Exercise any Rights vested in or Controlled by such Member Company (as required to be so vested or controlled) without the prior written approval of the Board.
- 11.5. There shall be 2 (two) categories of Membership, being Voting Member Companies and Non-Voting Member Companies, each of which having the Rights and obligations stipulated in this MOI and the Companies Act.
- 11.6. The Rights attaching to each category of Membership may be amended from time to time by Special Resolution of the Voting Member Companies.
- 11.7. The Board shall be entitled to determine, and to require the payment by Member Companies of, such annual or other periodic levy or contribution ("**Member's Contribution**") as the Board may deem necessary and desirable from time to time, in order to make due provision for the anticipated operational costs and other budgeted financial commitments of the Company (including its need to establish reasonable and prudent reserves and provisions).
- 11.8. In determining such Member's Contribution, the Board shall distinguish between Voting Member Companies and Non-Voting Member Companies, as well as between Member Companies of the same category, either on the basis of size or turnover, or on such other basis as the Board may deem fair and equitable, including but not limited to the Member Companies' assets under management and premium income. The Board shall also be entitled to impose penalty interest not exceeding the Prime Interest Rate plus 200 (two hundred) basis points, reckoned on the amount unpaid on due date throughout the period of any default.



- 11.9. Should any Member Company fail or refuse to remit full payment of its Member's Contribution within the time period stipulated by the Board, and remain in default for a period of more than 60 (sixty) days following the receipt of a written notice requiring the payment of such Member's Contribution, the Nominations Committee shall be entitled to suspend or terminate the Membership of such defaulting Member Company (as it may deem appropriate), as contemplated in paragraph 2.1 of the Membership Rules in **Annexure A**, provided that the Nominations Committee shall also be entitled at its discretion to condone or compromise any such default and to reinstate the Membership of the Member Company concerned.
- 11.10. The termination or suspension of Membership for any reason, including resignation, shall not *ipso facto* release a Member Company from liability for payment of any arrear Member's Contributions which became due for payment prior to the date of such termination or suspension, unless the Member Company submitted notice of its resignation as a Member Company in Writing to the Company not more than 60 (sixty) days after the date upon which such Member's Contribution became due.
- 11.11. The application for, and appointment as, a Member Company, and the suspension and/or termination of Membership shall be regulated by the Nominations Committee, in accordance with the provisions of the Membership Rules.
- 11.12. The Membership Rules may be updated, amended and/or replaced by the Board from time to time, subject to the approval by Special Resolution of the Voting Member Companies.

## **12. GENERAL MEETINGS AND ROUND ROBIN RESOLUTIONS**

- 12.1. 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.
- 12.2. The Company shall, as determined by the Board, either:
- 12.2.1. hold a General Meeting in order to consider one or more resolutions;
- or

- 12.2.2. as regards such resolution/s that could be voted on at a General Meeting, other than an annual General Meeting, instead require them to be dealt with by Round Robin Resolution.
- 12.3. The Company must hold a General Meeting or put the proposed resolution by way of a Round Robin Resolution at any time that the Board is required by the Companies Act or this MOI to refer a matter to Voting Member Companies for decision.
- 12.4. Business may be transacted at any General Meeting only while a quorum is present.
- 12.5. The quorum to convene a General Meeting, and for a matter to be decided upon at the General Meeting, shall be the lower of (i) 7 (seven) Voting Member Companies being Present; or (ii) Persons entitled to Exercise (in aggregate) 25% (twenty five percent) of all the Voting Rights that are entitled to be Exercised at that meeting or on that matter (as the case may be) being Present.
- 12.6. If within 60 (sixty) minutes from the time appointed for the General Meeting to commence, a quorum is not present:
  - 12.6.1. the Chairperson shall be entitled, but not obliged, to postpone the time appointed for the General Meeting to commence by another 30 (thirty) minutes; or
  - 12.6.2. subject to clause 12.8, the General Meeting shall be postponed, without motion, vote or further notice, for 5 (five) Business Days, and if at such adjourned General Meeting a quorum is not present within 60 (sixty) minutes from the time appointed for the General Meeting then, the Person/s entitled to vote who are Present shall be deemed to be the requisite quorum.
- 12.7. A General Meeting, or the consideration of any matter being debated at the General 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:
  - 12.7.1. held by all of the Persons who are present at the General Meeting at the time; and

12.7.2. that are entitled to be Exercised on at least one matter remaining on the agenda of the General 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 the Voting Member Companies) as agreed at the General Meeting.

12.8. No further notice is required to be Delivered by the Company of a General Meeting that is postponed or adjourned as contemplated in clause 12.6 or clause 12.7, unless the location for the General Meeting is different from:

12.8.1. the location of the postponed or adjourned General Meeting; or

12.8.2. a location announced at the time of adjournment, in the case of an adjourned General Meeting.

12.9. If a quorum has been established for a General Meeting or for a matter to be considered at a General Meeting, and such a number of Member Companies subsequently departs from the meeting giving rise to a quorum no longer being present at the General Meeting, the General Meeting shall be adjourned and any matters not considered at the General Meeting shall be considered and/or voted upon at an adjourned meeting.

12.10. The Chairperson shall preside as chairperson at every General Meeting. If there is no such Chairperson, or if at any General Meeting s/he is not present within 15 (fifteen) minutes after the time appointed for holding the General Meeting or is unwilling to act as chairperson, the Deputy Chairperson shall preside as chairperson of the General Meeting. If no Deputy Chairperson has been elected, or if at any meeting the Deputy Chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it or is unwilling to act as such, the Voting Member Companies who are Present shall elect a Director present at the General Meeting, (or if no Director shall be present at the General Meeting or if all the Directors present decline to take the chair, one of the Voting Member Companies which is present) to be Chairperson of the General Meeting.

12.11. At any General Meeting a resolution put to the vote shall be decided on a show of hands.

- 12.12. Each Voting Member Company Present at the meeting shall have only 1 (one) vote (whether voting by show of hands or on a poll).
- 12.13. A declaration by the chairperson of the General Meeting 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 the 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 General Meeting or adjourned General Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such General Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the General Meeting, whose decision shall be final and conclusive. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the General Meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 12.14. Any poll demanded in accordance with the Companies Act shall be taken immediately. The demand for a poll shall not prevent the continuation of a General 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.
- 12.15. Every resolution of Member Companies is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall be adopted with the support of more than 50% (fifty percent) of the Voting Rights Exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of an particular matter contemplated in this MOI, shall be adopted with the support of at least 75% (seventy five percent) of the Voting Rights Exercised on the resolution. For the avoidance of doubt, it is recorded that if a Member Company abstains from voting, it shall be regarded as not having Exercised its Voting Rights on such resolution for the purpose of determining whether the resolution has sufficient support to be adopted.

### 13. DIRECTORS AND CASUAL VACANCIES

- 13.1. The minimum number of Directors shall be 3 (three). Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company. For the avoidance of doubt, for so long as the number of Directors is reduced below the minimum number of Directors stipulated above, the continuing Director/s may continue to act, but only:
- 13.1.1. to preserve and secure the assets and enterprise of the Company, and to ensure the continuity of its business activities and functions; and/or
- 13.1.2. to cause vacancies to be filled, and the number of Directors to be increased to the required minimum.
- 13.2. Once an entity has been admitted as a Voting Member Company in accordance with the provisions of this MOI, the most senior executive of such Voting Member Company, who is in the permanent and exclusive employment of that Voting Member Company ("**Senior Exec**") shall automatically become a Director upon him/her providing the Nominations Committee (or its nominee) with a written consent to serve as director, and provided that he/she is not Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed as a Director nor act as a Director. A Person placed under probation by a court must not serve as a Director unless the order of court so permits.
- 13.3. If the Senior Exec of any Voting Member Company ceases to be a Senior Exec of such Voting Member Company, s/he shall cease to be a Director, and the new Senior Exec of such Voting Member Company shall automatically be appointed as a Director in his/her place with effect from the date on which the previous Senior Exec ceases to be a Director and upon such new Senior Exec providing the Nominations Committee (or its nominee) with a written consent to serve as director.
- 13.4. If a Senior Exec of a Voting Member Company is removed as a Director pursuant to clause 16, then such Voting Member Company shall not have a Director on the Board until such time as the Senior Exec is replaced by a new Senior Exec and clause 13.3 becomes applicable.

- 13.5. Each year at the Annual General Meeting, the persons who were appointed as Directors in the period from the previous Annual General Meeting (if any) will be announced.
- 13.6. Notwithstanding the foregoing, the Board may appoint as Director any person who (i) in the reasonable opinion of the Board has the appropriate knowledge and experience; and (ii) is not affiliated with a Member Company.
- 13.7. The Chairperson and Deputy Chairperson of the Company shall be elected by the Board from among themselves by majority vote. They shall hold their respective offices concurrently for a period of 2 (two) years and shall be eligible for re-appointment. **Annexure B** contains the process of appointing both the Chairperson and Deputy Chairperson of the Board.
- 13.8. Save as provided in this clause 13, there are no general qualifications prescribed by the Company for a Person to serve as a Director in addition to the requirements of the Companies Act.
- 13.9. No Alternate Directors may be appointed.
- 13.10. The a foregoing provisions shall in no way derogate from the power of the Board to appoint a chief executive of the Company (in accordance with the provisions of clause 19.4 below), who shall serve *ex officio* as a Director, for such term and upon such conditions as the Board may determine from time to time.
- 13.11. The Board shall appoint 1 (one) or more persons to act as the authorised representative(s) of the Company at meetings of the shareholders, members, or board of directors or otherwise, as the case may be, of any company contemplated in clause 4.1.4.1 above.

#### **14. NOMINATIONS COMMITTEE**

- 14.1. The Nominations Committee shall comprise of not less than 3 (three) persons, and there shall be no limitations as to the maximum number of persons. The Nominations Committee shall determine (from time to time) the maximum number of persons who shall be appointed to the Nominations Committee for the relevant period.
- 14.2. The Nominations Committee shall consist of:
- 14.2.1. the members of the Executive Committee; and

- 14.2.2. any other members ("**Appointed Representatives**") as the Nominations Committee may determine, each such member being:
  - 14.2.2.1. the Senior Exec of a Voting Member Company who is not also a Director; and/or
  - 14.2.2.2. a person, who in the reasonable opinion of the Nominations Committee, has the requisite industry knowledge, experience, and skills.
- 14.3. Any Appointed Representative may be removed from the Nominations Committee if such removal is approved by the majority of members (excluding such Appointed Representative) of the Nominations Committee.
- 14.4. Each year at the Annual General Meeting, the persons who were appointed as the Appointed Representatives in the period from the previous Annual General Meeting (if any) will be announced.
- 14.5. Save as otherwise stipulated above, the determinations, decisions and selections of the Nominations Committee shall be final and binding upon all Member Companies, the Board, and other persons affected thereby. The Nominations Committee may at its discretion, but shall be under no obligation to, provide reasons for, or to justify and motivate, its decisions and recommendations.
- 14.6. In addition to its other functions, the Nominations Committee shall review the performance and effectiveness of the Chairman, the Board and certain Board Committees (as may be determined in accordance with the governance principles of the Company). In this regard, the Nominations Committee's responsibilities shall include, but not be limited to:
  - 14.6.1. reviewing the attendance reports of the Board and Board Committees;
  - 14.6.2. annually reviewing the effectiveness surveys completed by the Directors and the members of Board Committees; and
  - 14.6.3. making recommendations to the Board pursuant to its findings.

**15. THE EXECUTIVE COMMITTEE**

The Executive Committee consists of:

- 15.1. the Chief Executive Officer;
- 15.2. the Chairperson;
- 15.3. the Deputy Chairperson; and
- 15.4. any additional non-executive Directors as may be appointed by the Board.

**16. CESSATION OF OFFICE AS DIRECTOR**

- 16.1. A Director shall cease to hold office as such:
  - 16.1.1. immediately if he/she becomes Ineligible or Disqualified or the Board resolves to remove him/her on such basis, and in the latter case the 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/she shall be suspended);
  - 16.1.2. when he/she dies;
  - 16.1.3. when he/she resigns by Written notice to the Company;
  - 16.1.4. if he/she is removed in the manner contemplated in section 71 of the Companies Act;
  - 16.1.5. if he/she is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director;
  - 16.1.6. if the Board resolves by a two third majority of the Directors (excluding such Director) for such Director to be removed for good reason, as determined by such two third majority of the Board;
  - 16.1.7. he/she files a petition for the surrender of his/her estate or an application for an administration order, or if he/she commits an act of insolvency as defined in the Insolvency Act, 1936 (Act 24 of 1936), or if he/she makes any arrangement or composition with his/her creditors generally; or



- 16.1.8. he/she is otherwise removed in accordance with any provisions of this MOI;
  - 16.1.9. if the Voting Member Company by whom such Director is employed ceases to be a Voting Member Company; or
  - 16.1.10. if the Director, without special leave of absence from the Board, absents himself/herself from 3 (three) consecutive meetings of the Board, unless the Nominations Committee or the Board determines otherwise.
- 16.2. For the avoidance of doubt, it is recorded that the Membership of the Voting Member Company shall not be affected by the representative of such Voting Member Company ceasing to be a Director.

## **17. REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD COMMITTEES**

The Directors and members of Board committees shall not be remunerated for their services as Directors or members of Board Committees, nor shall they be entitled to any expenses for travelling (including expenses incurred in respect of accommodation) to and from meetings of the Board or Board Committees.

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

Except as permitted in terms of the Companies Act, the Company shall not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director or a director of a Related or Inter-related company, or to a person Related to any such Director / director.

## **19. GENERAL POWERS AND DUTIES OF DIRECTORS**

- 19.1. The powers of management granted to the Board in terms of section 66(1) of the Companies Act are limited to the extent that the Board may not take any action which requires approval by way of an Ordinary Resolution or Special Resolution in terms of the Companies Act and/or this MOI, unless such approval has been obtained.
- 19.2. The Board may from time to time adopt (and/or amend and/or replace) a board charter governing the duties and responsibilities of the Board and each Director (provided that such board charter may not contradict any pre-emptory provisions of this MOI or any Applicable Laws), which board charter will be binding upon all Directors if approved by a Board resolution adopted by a two third majority of the Directors.

- 19.3. The Board may from time to time appoint any person (whether being a Member Company or not) as chief executive officer ("**Chief Executive Officer**") or executive chairman ("**Executive Chairman**") of the Company for such term and at such remuneration as it may deem fit and generally on such terms as they may think fit, and (subject to any contract entered into between the Board and such Chief Executive Officer) may from time to time remove him/her and appoint some other person as Chief Executive Officer in his/her place; and it may be made a term of his/her appointment that he/she be paid a pension, gratuity or other benefit on his/her retirement from office.
- 19.4. The Board may from time to time entrust to and confer upon a Chief Executive Officer or Executive Chairman for the time being such of the powers vested in the Board as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Board, and may from time to time revoke or vary all or any of such powers. A Chief Executive Officer or Executive Chairman appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Board and after powers have been conferred upon him/her by the Board in terms hereof he/she shall be deemed to derive such powers directly from this clause.
- 19.5. The Board may regulate the general expenses of the Company and fix the salaries and emoluments of all employees, in consultation with the Chief Executive Officer.
- 19.6. The Board shall pay and defray the expenses and liabilities of the Company, incurred in the exercise or enforcement of the rights vested in or controlled by the Company, out of the monies received by the Company in respect of the exercise or enforcement of such rights.
- 19.7. The business and operations of the Company shall be conducted and managed by the Board, who may exercise all such powers of the Company as are not, by the Companies Act, or by this MOI, required to be exercised by

- 19.8. the Company in General Meeting, subject to the provisions of the Companies Act or of this MOI, and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Company in General Meeting. No regulation made by the Company in General Meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.
- 19.9. The Board may, from time to time and at any time, by power of attorney appoint any company, corporation, person, or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes, and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this MOI), and for such period, and subject to such conditions, as it may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
- 19.10. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.
- 19.11. A Director shall:
- 19.11.1. comply with all of his/her duties and responsibilities as director of the Company as contemplated in any Applicable Laws and this MOI;
  - 19.11.2. act in (i) good faith towards the Company, the Member Companies and his/her fellow Directors; and (ii) the best interests of the Company, and not in his or her own interest or in the interests of the Voting Member Company by whom he/she is employed;
  - 19.11.3. be bound by, and adhere to, the provisions of any board charter approved in terms of clause 19.2; and
  - 19.11.4. not in any public forum (including by Electronic Communication) (whether in his/her capacity as Director, or as employee/ director/

- 19.11.5. representative of the Voting Member Company, or in his/her personal capacity) express any views and/or make any statements which may reasonably be regarded as contradictory to the views and/or statements expressed by the Company and/or reflected in any decision taken, or view adopted, by the Member Companies in a General Meeting, the Board or by any Board Committees.

## 20. BOARD COMMITTEES

- 20.1. The Board may appoint any number of governance and technical Board committees at its discretion and may delegate to such committees any authority of the Board ("**Board Committee**"). In addition, the Board shall appoint such Board Committees as may be required to be appointed in terms of any Applicable Laws.
- 20.2. The members of such committees may include persons who are not on the Board, as long as they are not Ineligible or Disqualified to be on the Board, and provided that no such person shall have a vote on a matter to be decided by the Board Committee.
- 20.3. 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.
- 20.4. Subject to the provisions of clause 14 above in relation to the Nominations Committee, there are no general qualifications prescribed by the Company for a person to serve as a member of a Board Committee, save for the requirements of the Companies Act, and the following specific conditions, namely that:
- 20.4.1. the Board shall determine the composition and membership of each Board Committee, and may review its own decisions with respect thereto;
- 20.4.2. each such Board Committee shall remain at all times accountable to the Board for the performance of its delegated functions and the Board shall not be divested of its overriding or substantive powers by reason of any such delegation. **Annexure C** contains the Terms of Reference of each Board Governance Committee

- 20.4.3. any written reports and/or recommendations issued by any such Board Committee must record any dissenting minority views in relation to the subject matter thereof;
- 20.4.4. each member of a Board Committee shall be bound to the provisions of clause 19.12 (*mutatis mutandis*);
- 20.4.5. any such Board Committee shall, in the exercise of its powers and functions, conform to any rules, restrictions or procedures imposed upon it by the Board, including such as may relate to quorum, voting, frequency of meetings, and notices, on condition that the Board shall be entitled, should it deem this necessary, to vary its directions, and to disestablish any such Committee at any time, without being required either to give prior notice, or to give reasons for its decisions; and
- 20.4.6. the Board Committees may, at the discretion of the Board, include, but are not limited to, the following committees (which committees' names may be changed from time to time, as the circumstances or context may require):
  - 20.4.6.1. a Nominations Committee as contemplated in clause 14;
  - 20.4.6.2. a remuneration committee, whose primary focus shall be to assist and advise the Board on matters relating to the remuneration of the Board;
  - 20.4.6.3. an audit committee, whose primary focus shall be that of oversight and financial reporting; and
  - 20.4.6.4. a transformation committee, whose primary focus shall be that of transforming the Industry and the Company as contemplated in the Broad-Based Black Economic Empowerment Act, 2003 (No. 53 of 2003).
- 20.5. Each of the remuneration committee and the audit committee shall consist of the members of the Executive Committee, other than the Chief Executive Officer.

## 21. PERSONAL FINANCIAL INTERESTS OF DIRECTORS

The provisions of section 75 of the Companies Act apply to the Directors unaltered and to the members of any Board Committees, *mutatis mutandis*.

## 22. PROCEEDINGS OF DIRECTORS

22.1. The Board shall meet at least twice per year, which meetings shall be summoned by the Chairperson or Deputy Chairperson of the Board. In addition, the Chairperson or Deputy Chairperson may call such additional meetings of the Board as he/she/they may reasonably regard as necessary.

22.2. The Board may determine what period of notice shall be given of meetings of the Board and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of the Board to all Directors even those for the time being absent from South Africa.

22.3. If all of the Directors:

22.3.1. acknowledge actual receipt of the notice;

22.3.2. are present at a meeting of the Board; or

22.3.3. waive notice of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

22.4. The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

22.5. Unless otherwise resolved by the Board, 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 the Board may be conducted by Electronic Communication and/or one or more Boards may participate in a meeting of the Board 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.

- 22.6. The quorum for a Board meeting shall be the lower of (i) 7 (seven) Directors; or (ii) half of the Directors then in office.
- 22.7. The Chairperson shall preside as chairperson for each Board meeting. If no Chairperson has been elected, or if at any meeting the Chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the Deputy Chairperson shall preside as chairperson of the Board meeting. If no Deputy Chairperson has been elected, or if at any meeting the Deputy Chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be Chairperson of the meeting.
- 22.8. Each Director has 1 (one) vote on a matter before the Board and, except to the extent provided otherwise in this MOI, a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 22.9. In the case of a tied vote, the chairperson of the meeting may cast a second or deciding vote.
- 22.10. A Round Robin Resolution of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

### **23. PRESCRIBED OFFICERS**

- 23.1. No person shall hold office as a Prescribed Officer, if he/she 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/her being a Prescribed Officer nor act in such 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/her being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.
- 23.2. A Prescribed Officer shall cease to hold office as such immediately he/she becomes Ineligible or Disqualified in terms of the Companies Act.

### **24. APPOINTMENT OF SECRETARY**

The Board shall appoint a Secretary as contemplated in the Companies Act.

**25. MINUTES**

- 25.1. The Board shall procure that minutes are kept at all General Meetings of the Member Companies, and at meetings of the Board and Board Committees.
- 25.2. Such minutes shall be approved by the chairperson of the meeting at which the proceedings took place, or by the chairperson of the next succeeding meeting.

**26. COMPLIANCE WITH SECTION 30B(2) OF THE INCOME TAX ACT**

Notwithstanding anything to the contrary which may be contained in this MOI, the Board shall at all times ensure that the Company complies with its obligations in terms of the Income Tax Act, including that:

- 26.1. the Company must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company, as contemplated in the Income Tax Act;
- 26.2. no single person may directly or indirectly control the decision-making powers relating to the Company;
- 26.3. the Company may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;
- 26.4. the Company is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;
- 26.5. no Member Company may directly or indirectly have any personal or private interest (as such terms are contemplated in the Income Tax Act) in that Company;
- 26.6. substantially the whole of the activities of the Company must be directed to the furtherance of its sole or principal object and not for the specific benefit of an individual Member Company or minority group;
- 26.7. the Company may not have a share or other interest in any business, profession or occupation which is carried on by any Member Company;
- 26.8. the Company must not pay to any employee, office bearer, Member Company or other person any remuneration, as defined in the Fourth



- 26.9. Schedule to the Income Tax Act, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;
- 26.10. substantially the whole of the Company's funding must be derived from the Member Companies or from an appropriation by the government of the Republic in the national, provincial or local sphere;
- 26.11. the Company must as part of its dissolution transfer its assets to:
- 26.11.1. another company approved by the Commissioner in terms of section 30B(2) of the Income Tax Act;
  - 26.11.2. a public benefit organisation approved in terms of section 30 of the Income Tax Act;
  - 26.11.3. an institution, board or body which is exempt from tax under section 10(1)(cA)(i) of the Income Tax Act; or
  - 26.11.4. the government of the Republic in the national, provincial or local sphere;
- 26.12. the persons contemplated in clause 26.1 will submit any amendment of this MOI to the Commissioner within 30 (thirty) days of its amendment;
- 26.13. the Company will comply with such reporting requirements as may be determined by the Commissioner from time to time; and
- 26.14. the Company is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103 (5) of the Income Tax Act.

## **27. CONFIDENTIALITY**

- 27.1. Any Confidential Information obtained by a Director by virtue of his/her office as such and/or by a Member Company, whether received in relation to or during meetings of the Board, meetings of the Board Committees or meetings of the Member Companies or otherwise, shall be treated as confidential and shall not be disclosed by such Director and/or Member Company, or used for any purpose other than to fulfil his/her/its obligations to the Company.

- 27.2. Each Director and Member Company agrees that, notwithstanding that certain of the Confidential Information may already be in his/her/its possession as at the date of adoption of this MOI, the Confidential Information shall remain subject to the provisions of this clause 27.
- 27.3. If a Director and/or Member Company is compelled in terms of any Applicable Laws to disclose any of the Confidential Information to any third party, he/she/it shall immediately notify the entity to which such Confidential Information relates in order to enable such entity to seek an appropriate protective order, and such compelled disclosure shall not constitute a breach of this clause 27.
- 27.4. This duty of confidentiality remains even after a Director ceases to hold office or a Member Company ceases to be a Member, but ceases to apply to such information which becomes accessible to the public.

## **28. NOTICES**

- 28.1. The Company may give notices, documents, records or statements or notices of availability of the a foregoing by personal delivery to the Member Company or by sending them prepaid through the post or by transmitting them by telegram, telex, fax, or Electronic Communication.
- 28.2. Any Member Company who/which has furnished an Electronic Address to the Company, by doing so:
- 28.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the a foregoing to him/her/it; and
- 28.2.2. confirms that same can conveniently be printed by the Member Company within a reasonable time and at a reasonable cost.
- 28.3. Any notice required to be given by the Company to the Member Companies 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 28.1 and 28.2), if given by posting it on the Company's web site until at least the date when the event to which the notice refers occurs.

- 28.4. Any notice, document, record or statement or notice of availability of the a foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with the Companies Act.
- 28.5. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the a 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 a 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 1), the provisions of clause 1 shall also be applied.
- 28.6. As regards the signature of an Electronic Communication by a Member Company, it shall be in such form as the Board may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Board, it shall be constituted by the Member Company indicating in the Electronic Communication that it is the Member Company's intention to use the Electronic Communication as the medium to indicate the Member Company's approval of the information in, or the Member Company's signature of the document in or attached to, the Electronic Communication which contains the name of the Member Company sending it in the body of the Electronic Communication.

## **29. WINDING UP**

Despite any provision in any law or agreement to the contrary, but subject to clause 26.11, upon the winding-up, deregistration or dissolution of the Company:

- 29.1. no past or present Member Company or Director, or Person appointing a Director, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied;
- 29.2. all accumulated economic interest (including the assets) of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to approved public benefit organisations having similar objects to the Company. Such public benefit organisations are to be determined by the Board on or before the time of the dissolution of the Company, or failing such

- 29.3. determination, by the relevant court, but shall not be paid or distributed by way of dividend, bonus or otherwise to its Directors or its Subsidiaries, if any; and
- 29.4. each Voting Member Company undertakes to contribute to the assets of the Company an amount determined by the Board (but not exceeding R1,000,000.00 (one million rand)), in the event of the Company being wound up, either while it is a Member Company or within 1 (one) year thereafter, for the purpose of payment of the debts and liabilities of the Company contracted before it ceased to be a Member Company, and for the payment of the costs, charges and expenses of the winding-up, and for the adjustment of the rights of the contributories amongst themselves. No such contribution shall be payable by Non-Voting Member Companies.

**Membership Rules****1. Categories, eligibility creation, and admission**

- 1.1. Membership of the Company shall be restricted to companies and other enterprises forming part of the Industry, including such as may be involved and/or associated with the provision of products and services to the Industry.
- 1.2. A Member Company shall be admitted as a Voting Member Company by the Nominations Committee at its discretion, and on condition that each such potential Voting Member Company satisfies the following eligibility criteria, namely:
  - 1.2.1. such Member Company must be an institution duly established, registered, and authorised in terms of the Applicable Laws, as a provider within the Republic of one or more of the following Industry related financial services and/or products, namely:
    - 1.2.2. investment management, involving the selection of securities and portfolio construction in respect of primary securities (including stocks, bonds, money market instruments and derivatives);
      - 1.2.2.1. management of collective investment schemes;
      - 1.2.2.2. long-term insurance and/or re-insurance;
      - 1.2.2.3. administrative financial services (linked investment service providers);
      - 1.2.2.4. multi-management; and/or
      - 1.2.2.5. such other financial products or services as may from time to time be determined for this purpose by the Nominations Committee, at its sole discretion;
    - 1.2.3. such Member Company must be duly licensed to conduct its business and activities by the Relevant Regulator, or by such other regulatory body established in terms of the Applicable Laws, as may be appropriate in respect of the Member Company concerned;

- 1.2.4. such Member Company must satisfy the minimum eligibility threshold as may be determined by the Nominations Committee from time to time in respect of the type of business contemplated in paragraph 1.2.1; and
  - 1.2.5. notwithstanding anything to the contrary contained herein, the Holding Company or another member of a Conglomerate Group may, at its request, be permitted by the Nominations Committee to apply for Voting Membership, notwithstanding that such Holding Company or member may not itself comply with the eligibility criteria contained in paragraphs 1.2.1 to 1.2.4, and subject thereto that only one company within a Conglomerate Group shall be permitted as a Voting Member Company.
- 1.3. Non-Voting Membership shall comprise of such companies (or other enterprises, if any) as the Nominations Committee may from time to time resolve to admit as Non-Voting Member Companies, on condition that:
- 1.3.1. such Non-Voting Member Companies satisfies the following eligibility criteria:
    - 1.3.1.1. such Non-Voting Member Company must be institutions which (subject to paragraph 1.3.2) are duly registered in the Republic, and which carry on business as registered and authorised providers of one or more of the financial products and services referred to under paragraphs 1.2.2 to 1.2.2.5 above;
    - 1.3.1.2. such Non-Voting Membership meets such further eligibility criteria, including a minimum financial threshold in relation to the type of business concerned, as may be determined by the Nominations Committee from time to time at its sole discretion; or
  - 1.3.2. despite not meeting the eligibility criteria set out in paragraph 1.3.1, such Non-Voting Member Companies may also include (but shall not be restricted to):
    - 1.3.2.1. foreign-based institutions duly licensed by the Relevant Regulator, and which carry on business in the Republic

- 1.3.2.2. as foreign collective investment schemes and/or as the duly registered and authorised providers of one or more of the other financial products and services as are referred to under paragraph 1.2.1 above; and
- 1.3.2.3. such companies (and other enterprises, if any) as the Nominations Committee may from time to time resolve to admit to Non-Voting Membership, provided that each potential Non-Voting Member Company must be an institution, partnership; individual or juristic person, or other entity, involved in a business activity which is complementary and ancillary to one or more of the services and products referred to under paragraph 1.2.1 above. By way of example only, potential Non-Voting Member Companies may include (but not be limited to) actuarial and investment consultants; accountants, lawyers, information providers, Industry service providers, Industry switches, and software firms;
- 1.3.3. such Non-Voting Member Company complies with the same eligibility criteria *mutatis mutandis* as is set out in paragraph 1.2 above, save and except that the size, scale and nature of the business of a Non-Voting Member Company may be less substantial than that applicable to a Voting Member Company, and consequently subject to a lower eligibility threshold in relation to the type of business concerned, as may be determined by the Nominations Committee from time to time, at its sole discretion; and
- 1.3.4. if the Nominations Committee decides that a Non-Voting Member Company complies with the eligibility criteria for a Voting Member Company as stipulated in paragraph 1.3, the Nominations Committee may admit such Non-Voting Member Company as a Voting Member Company, provided that such Non-Voting Member Company consents thereto.

- 1.4. An applicant for Membership will become a Member Company if the Nominations Committee approves the admission of such applicant as a Voting Member Company or a Non-Voting Member Company
- 1.5. The Nominations Committee decision regarding admission to Membership will be final and not subject to review.

## **2. Termination or Suspension**

- 2.1. Notwithstanding anything to the contrary herein contained or implied, Membership may be suspended or terminated at any time by the Nominations Committee, if:
  - 2.1.1. a Member Company ceases to actively carry on the business which rendered such Member Company eligible to become a Member Company in the category concerned; or failing and/or refusing, upon written request therefor, to provide proof to the satisfaction of the Nominations Committee as to such Member Company's continued compliance with the other eligibility criteria applicable to its Membership; or
  - 2.1.2. a Member Company:
    - 2.1.2.1. is convicted of any criminal offence involving dishonesty; or
    - 2.1.2.2. is found guilty of committing any other material contravention of the Applicable Laws; or
    - 2.1.2.3. is guilty (in the reasonable opinion of the Nominations Committee) of any other conduct which in the opinion of the Nominations Committee might be seen to reflect adversely upon the Industry or upon such Member Company's continued fitness and suitability to be a Member Company; or
    - 2.1.2.4. fails and/or refuses to remit payment of its Member's Contribution, within the time and in the manner contemplated by clause 11.9 of this MOI; or



- 2.1.3. the Nominations Committee, in its sole and absolute discretion is of the view that such suspension or termination of Membership is, for any other reason, in the best interests of the Company.
- 2.2. The suspension / termination of Membership shall be effective from the date determined by the Nominations Committee by written notice to the Member Company concerned, from which date all rights and benefits of Membership shall cease to apply.
- 2.3. Before suspending or terminating Membership as aforesaid, the Nominations Committee shall afford the Member Company concerned an opportunity to make representations (either verbally or in writing, as the Nominations Committee may deem appropriate) with regard to the issues affecting the continuance of its Membership.
- 2.4. Should the Nominations Committee in its sole discretion deem it appropriate, the Nominations Committee may furnish reasons for its decisions with respect to the termination or suspension of Membership but shall be under no express or implied obligation to furnish such reasons or to motivate its decisions with respect to the suspension or termination of Membership.
- 2.5. Membership of the Company shall be terminated immediately:
  - 2.5.1. upon the voluntary dissolution or final liquidation of any Member Company which is a company or other juristic person or corporate body; or
  - 2.5.2. upon receipt by the Company of the resignation in Writing of the Member Company concerned, which resignation shall take effect at the end of the calendar month succeeding the month in which such notice is received by the Company.

**PROCESS OF APPOINTING THE EXCO, CHAIR AND DEPUTY CHAIR**

This outlines the historical process of determining the composition of EXCO, along with the appointment of the Chair and Deputy Chair of the Board.

ASISA was established in October 2008, following discussions among the four largest asset managers at the time (Investec, Coronation, Allan Gray, and Prudential) and the four largest insurance companies (Sanlam, Old Mutual, Liberty, and Momentum).

These eight entities agreed that EXCO would be composed of any three of the four largest asset managers and any three of the four largest insurance companies. Additionally, one smaller asset manager and one smaller insurance company would be included to ensure representation for smaller firms in EXCO.

The principles guiding the selection of the Chair and Deputy Chair of the Board are as follows:

- The Chair and Deputy Chair are chosen from the EXCO members.
- Their terms last for two years, with eligibility for re-election for an additional two years.
- If the Chair is from an asset manager, the Deputy Chair will be from an insurance company, and vice versa.
- Nominations have traditionally come from larger members due to their resources, support base, stature in the industry, networks, and connections, as well as the fact that membership fees are proportional to the size of the organisation's assets under management (AUM).

**Association for Savings and Investment – South Africa Non-Profit Company  
("ASISA NPC")**

**GOVERNANCE COMMITTEES**

**(ExCo, NomsCo, RemCo, Audit &  
Transformation)**

**TERMS OF REFERENCE ("TOR")**

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## **1 INTRODUCTION AND PURPOSE**

- 1.1 Governance Committees of the Board ("the Committees"), provide organisational direction with the power to act on behalf of the full Board. They also serve as organisational oversight bodies over the daily implementation of Board policies, ensuring that the Board is establishing and maintaining good corporate governance practices. They manage high-level workplace issues of a serious nature on behalf of the Board.
- 1.2 The deliberations and work of the Committees do not reduce the individual and collective responsibilities of the Board about the fiduciary duties and responsibilities of Company directors, and the Board must continue to exercise due care and judgment in the exercise of its functions, in accordance with its statutory obligations.
- 1.3 These ToR are subject to the provisions of the Companies Act, 71 of 2008, as amended ("the Companies Act") and the Companies Regulations, 2011 ("the Regulations"), ASISA's Memorandum of Incorporation ("the Mol") and any other applicable laws and regulatory provisions.
- 1.4 The duties and responsibilities of members of Committees as set out in these ToR are in addition to those duties and responsibilities that they have as members of the Board.

## **2 MANDATE**

- 2.1 The Committees' authorities are derived from the delegated authority from the Board as contemplated in these ToR, in accordance with section 72(1)(b) of the Companies Act.
- 2.2 The Committees provide oversight and make recommendations to the Board in respect of matters within the scope of the Committees' functions as set out in these ToR for the Board's consideration and, if the Board considers it appropriate, ultimate approval.
- 2.3 The Committees must act independently (with accountability to the Board) and do not assume the functions of management.
- 2.4 The Board supports and endorses the Committees, operating independently of management and are free of any organisational impairment. The Committees act in accordance with their statutory duties and the delegated authority of the Board as recorded in these ToR.
- 2.5 Within the scope of this ToR, the Committees serve as oversight bodies responsible for shaping the organisation's strategic direction, and are authorised by the Board to focus on the following:

- 2.5.1 Seek any information they require from any employee, or any committee of the Company, any of the Company's management, Company Officers, Company Secretary ("Company Secretary") or assurance providers, and all these parties are required to co-operate with any requests made by the Committees, to provide them with information or explanations necessary for the performance of their functions.
- 2.5.2 Form and delegate their duties to a sub-committee, sub-committees or to any one or more designated members of the Committee, to the extent that same is permitted by the Companies Act.

### **3 ROLES AND RESPONSIBILITIES OF COMMITTEES**

#### **3.1 ExCo**

- 3.1.1 The Executive Committee has an independent role, providing oversight and making recommendations to the Board for consideration and approval, viz:
- a. Advising management, offering valuable insights and guidance, where required.
  - b. Streamlining the board's activities and key priorities.
  - c. Setting clear goals and a developmental plan for the organization's growth.
  - d. Harmonizing and overseeing the collaborative efforts of the entire board.
  - e. Providing organizational direction for the full board and the CEO.
  - f. Advising the CEO and executing the board's power between meetings.
  - g. Emergency decision-making.
  - h. Ensuring effective communication with members.

#### **NomsCo**

- 3.2.1 The Nominations Committee examines the characteristics and skills required of Board candidates, its Committees and Senior Executives as well as representatives of member companies on all the technical committees. viz The Committee makes recommendations to the Board for approval, on the following:
- a. Recommending suitable candidates for executive and board positions.
  - b. Reviewing the remuneration of senior executives as well as employee benefits.
  - c. Evaluating board and committees' composition and performance.
  - d. Ensuring compliance with the principles of good corporate governance.
  - e. Nominating potential candidates.
  - f. Conducting comprehensive interviews where necessary.
  - g. Influencing the diversity of the Board.
  - h. Evaluating Board members' performance.
  - i. Ensuring effective communication with members.

## **RemCo**

- 3.3.1 The Remunerations Committee provides oversight and makes recommendations to the Board for consideration and approval, on the following:
- a. Annually reviewing the company's Remunerations Policy and Practices to ensure alignment and compliance to the requirements of King IV.
  - b. Ensuring that the philosophy and practice of the company's Remunerations Policy is aligned to the company's strategy and performance goals.
  - c. Establishing executive compensation plans.
  - d. Ensuring that during the company's AGM the requisite ordinary resolutions endorsing the reviewed Remunerations Policy are passed.
  - e. Reviewing succession and retirement plans' cost for key positions in the company.
  - f. Ensuring effective communication with members.

### 3.4. **Audit Committee**

- 3.4.1 The Audit Committee provides oversight and makes recommendations to the Board for consideration and approval, on the following:
- a. Ensuring that the appointment of the auditor complies with the provisions of the Companies Act and any other legislation relating to the appointment of auditors.
  - b. Determining the nature and extent of any non-audit services that the auditor may provide to the company, or that the auditor must not provide to the company or related entity.
  - c. Pre-approving any proposed agreements with the auditor for the provision of non-audit services to the company, including the nature and the actual services.
  - d. Preparing a report to be included in the Annual Financial Statements ("AFS") attesting to the independence of the auditor and/or the audit.
  - e. Ensuring that there is a policy and controls in place to address the provision of non-audit services by the external auditor.
  - f. Ensuring that there is rotation of the designated external audit partner, and the management of the risk of familiarity between the audit partner and management.
  - g. Ensuring effective communication with members.

### 3.5. **Transformation Committee**

The Committee on behalf of the Board, undertakes the following:

- a. Ensures that there is a transformation strategy taking into account the company's capabilities and oversees the transformation of the savings and investments industry with the objective of aligning to that of the country.
- b. Oversees the strategy that is supporting and prioritising Diversity, Equity and Inclusion ("DEI") and also reflective of the population of the country. The Committee leads in the development and implementation of programs and services that acknowledge the differences in perspectives, ages, genders, cultures, and ethnicities. The aim being to encourage the provision of equal access to opportunities and fostering a sense of value and empowerment in employees.
- c. Ensuring effective communication with members.

## 4. **OPERATION OF THE COMMITTEE**

### 4.1. **Appointment and Tenure**

- 4.1.1. The Committees shall under the guidance of the chairperson of the Board, and on the recommendation of NomsCo, be constituted by the Board from amongst the directors of the Company.
- 4.1.2. The Committee Chairpersons shall be elected and appointed by the Board from amongst the directors of the Company.
- 4.1.3. The Chairperson of the Board must be a member of ExCo, NomsCo, RemCo, Audit and Transformation.
- 4.1.4. The Chairperson of the Board must be the Committee Chairperson of ExCo and NomsCo.
- 4.1.5. Notwithstanding 4.1.6 below, the Board may at any time remove a member of the Committee.
- 4.1.6. The tenure for members of the committee is determined by NomsCo with the approval of the Board.
- 4.1.7. The Board shall determine the period for which the Committee Chairperson shall hold such office.

## 4.2. **Composition and Quorum.**

- 4.2.1. The Committees must have at least three members and shall consist of members of ExCo and any other member.
- 4.2.2. Members of Committees shall be appointed and considered based on the assessment of their skills and business knowledge.
- 4.2.3. The Board shall from time-to-time review and, where appropriate, revise the composition of Committees in accordance with recommendations from NomsCo, taking into account the need for an adequate combination of financial and business skills and knowledge.
- 4.2.4. The quorum at any meeting of Committees shall be a majority of members.

## 4.3. **Attendees**

- 4.3.1. Directors of the company may attend Committee meetings when authorised by the Chair of the relevant Committee.
- 4.3.2. The Committee may invite any senior manager or other individuals to attend meetings of the Committee as they consider appropriate.
- 4.3.3. Individuals in attendance by invitation may participate in discussions, but do not form part of the quorum for Committee meetings and may not exercise voting rights on any matter.
- 4.3.4. Committees may at any time request other members or invitees to recuse themselves where the issues being discussed affect them and / or are of a sensitive nature.
- 4.3.5. The Company Secretary or his/her designated representative shall be the secretary of the Committee.

## 4.4. **Frequency of Committees**

- 4.4.1. Meetings of Committees shall take place as often as required, but at least four (4) times a year, at least a month prior to scheduled Board meetings, at which Board meetings the Committees' Chairpersons will present a report on the activities of the Committees.
- 4.4.2. Committee Chairpersons may, within the framework of any relevant directives set by the Board, convene a meeting of the Committee at any time and at his/her discretion.

## 4.5. **Participation and resolutions**

- 4.5.1. Committee members who are unable to attend Committee meetings shall inform the Committee Chairperson or Company Secretary at an early date.
- 4.5.2. Committee meetings may be conducted entirely by electronic communication, or



a Committee member may participate in a meeting by electronic communication, as contemplated in section 73(3) of the Companies Act (including by means of, inter alia, telephone, closed circuit television, webinar or video conferencing), 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.

- 4.5.3. Each Committee member has one vote on a matter before the Committee.
- 4.5.4. A majority of the votes cast on a Committee resolution is sufficient to approve that resolution and, in the case of a tied vote, the Committee Chairpersons shall not have a casting vote and the matter being voted on fails.
- 4.5.5. A Committee resolution in writing (round robin resolution) signed by the majority of the Committee members shall be as valid and effectual as if it had been passed at a Committee meeting.

#### 4.6. **Agenda, meeting papers and minutes**

- 4.6.1. The procedure to be followed for the convening of meetings, notice of meetings, and preparing agendas and minutes of meetings (to the extent not regulated in these ToR) will be determined from time to time and managed by the Company Secretary, in consultation with the Committees' Chairpersons and the Board.
- 4.6.2. To the extent reasonably practicable, Committee papers will be circulated to all Committee members at least one week before the meeting.
- 4.6.3. The Company Secretary shall keep appropriate records of all meetings of Committees as well as minutes of the proceedings and all decisions made.
- 4.6.4. Minutes of Committee meetings, signed by the Committee Chairperson, shall be sufficient evidence that the matters referred to therein have been fully discussed and agreed, whether by way of a formal meeting or otherwise.
- 4.6.5. The Company Secretary shall circulate the minutes of the meetings of the Committee within three (3) weeks to all members of the Committee and to the Chairperson of the Board.

### 5. **COMMITTEE WORK PLAN**

- 5.1. An annual work plan will be prepared for all the Committees and approved by the Board.

**6. TRAINING**

- 6.1. Committees, via the Company Secretary, shall make available to new members of Committees a suitable induction process.

**7. COMMITTEE EVALUATION**

- 7.1. Committees will be independently evaluated as required by legislation and / or best practice governance.

**8. ACCESS TO RESOURCES AND INFORMATION**

- 8.1. Committees have unrestricted access to Company information falling within the Committee's mandate and will liaise with management on its information needs and the appropriate reports and information that it should receive to enable it to review and oversee remuneration and benefit policies and plans.
- 8.2. With the prior notification to the Committee Chairpersons or the Chairperson of the Board, the Committee or any of its individual members, may take outside legal, accounting or other independent professional advice on matters relating to matters within the Committee's mandate,

**9. REPORTING**

- 9.1. Committee Chairpersons shall report to the Board at the first Board meeting following the last Committee meeting on the activities of the Committee.

**10. GENERAL**

- 10.1. Committee members are obliged to disclose to the Committee in writing any personal financial interest (as contemplated in section 75 read with section 1 of the Companies Act) and any other interests they have within or outside the Company that may be of interest to the Company or that may interfere or conflict with the performance of their duties as members of the Committee; provided that this is not applicable to any Committee members to the extent that they are directors of the Company and have disclosed such interests in accordance with the Board Charter and section 75 of the Companies Act.
- 10.2. All Company-related information that becomes known to directors in the performance of their duties must always be kept confidential.
- 10.3. Except to the extent of legal or regulatory provisions to the contrary, Committee members, are entitled to rely on the management of the Company in relation to matters within their area of expertise and may assume the accuracy of information provided by such persons, provided that Committee member is not aware of any reasonable grounds upon which reliance or assumption may be inappropriate.

**11. APPROVAL OF THE COMMITTEES' TOR**

- 11.1. These ToR were recommended for approval by the Board on 11 June 2024 and will be reviewed annually.