



## **NATIONAL FINANCIAL OMBUD SCHEME SOUTH AFRICA NPC**

**A NON-PROFIT COMPANY WITHOUT MEMBERS  
(HEREINAFTER REFERRED TO AS THE "COMPANY")**

**REGISTRATION NUMBER: 2023/162407/08)**

### **MEMORANDUM OF INCORPORATION**

This Memorandum was adopted by the incorporators of the Company in accordance with section 13(1) of the Companies Act No. 71 of 2008 as evidenced by the below signatures made by the incorporators on the Company's behalf. The Memorandum is in a form unique to the Company as contemplated in section 13(1)(a)(ii) of the Act and no prescribed form contemplated in section 13(1)(a)(i) applies to the Company.

This Memorandum, together with the National Financial Ombud Scheme South Africa Rules, comprises the governing rules of the National Financial Ombud Scheme South AFRICA (NFO) as contemplated in the Financial Sector Regulation Act, 9 of 2017, and is required to be approved by the Ombud Council in accordance with that Act.

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## 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this MOI unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:
- 1.1.1. “**Alternate Director**” means the person elected or appointed to serve, as the occasion requires, as a member of the Board in substitution for a particular elected Director of the Company;
- 1.1.2. “**Auditors**” means the auditors of the Company from time to time;
- 1.1.3. “**Board**” means the board of Directors from time to time of the Company;
- 1.1.4. “**CIPC**” means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;
- 1.1.5. “**Commissioner**” means the Commissioner for the South African Revenue Service;
- 1.1.6. “**Company**” means the National Financial Ombud Scheme South Africa NPC, (“NFO”) a non-profit company without members, with registration number 2023/162407/08;
- 1.1.7. “**Company Rules**” means the rules made by the Board in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Companies Act, and published by the Board as contemplated in clause 8 of this MOI;
- 1.1.8. “**Companies Act**” means the Companies Act 71 of 2008, and includes all regulations and schedules thereto;
- 1.1.9. “**Complainant**” has the meaning defined in the Scheme Rules;
- 1.1.10. “**Complaint**” has the meaning defined in the Scheme Rules.
- 1.1.11. “**Connected Person**” has the meaning ascribed to it in section 1 of the Income Tax Act;
- 1.1.12. “**Credit Ombud**” means the Credit Ombud that was previously afforded recognition under section 194 of the Financial Sector Regulation Act No 9 of 2017;

- 1.1.13. “**Day**” means a calendar day, unless qualified by the word “business”, in which instance a “**Business Day**” will be any day other than a Saturday, Sunday or public holiday as gazetted by the Government of the Republic from time to time;
- 1.1.14. “**Director**” means a member of the Board as contemplated in section 66 of the Companies Act, and shall include the initial incorporating directors of the Board;
- 1.1.15. “**Director not associated with the financial industry**” means a Director contemplated in clause 9.4.
- 1.1.16. “**Divisional Lead Ombud**” means a person appointed as such by the Board as set out in this MOI, who will act as the head of a division of the Company as directed by the Board;
- 1.1.17. “**Electronic Communication**” has the meaning set out in section 1 of the Electronic Communications and Transactions Act 25 of 2002;
- 1.1.18. “**Financial Institution**” means a financial institution that provides financial products and financial services as defined in the Scheme Rules;
- 1.1.19. “**First Residing Board**” means the Board appointed after the transition period occupied by the Initial Board, and appointed by the Selection Committee;
- 1.1.20. “**FSR Act**” means the Financial Sector Regulation Act, 9 of 2017;
- 1.1.21. “**FSCA**” means the Financial Sector Conduct Authority established in terms of the FSR Act;
- 1.1.22. “**Gazette**” means the government gazette or the provincial gazette, as the context may require;
- 1.1.23. “**Head Ombud**” means the person appointed as such by the Board as set out in this MOI, who will also act as the Chief Executive Officer of the Company;
- 1.1.24. “**Initial Board**” means the Board comprising the initial incorporating Directors as contemplated in clause 9.1.
- 1.1.25. “**Income Tax Act**” means the Income Tax Act 58 of 1962, and includes any replacement or successor legislation;
- 1.1.26. “**MOI**” means this memorandum of incorporation, as amended from time to time;

- 1.1.27. “**NCR**” means the National Credit Regulator established in terms of section 12 of the National Credit Act 78 of 1998;
- 1.1.28. “**NFO**” means the National Financial Ombud Scheme South Africa;
- 1.1.29. “**Non-profit Company**” means a non-profit company incorporated in terms of the Companies Act and operating in accordance with Schedule 1 of that Act;
- 1.1.30. “**OBS**” means the Ombudsman for Banking Services that was previously afforded recognition under section 194 of the FSR Act;
- 1.1.31. “**OLTI**” means the Ombudsman for Long-term Insurance that was previously afforded recognition under section 194 of the FSR Act;
- 1.1.32. “**Ombud Council**” means the Ombud Council established in terms of chapter 14 of the FSR Act;
- 1.1.33. “**Ombud Scheme**” bears the meaning ascribed to it in the FSR Act;
- 1.1.34. “**Ombud**” means a person under whatever title, who has the function in terms of the Scheme Rules of mediating or resolving complaints and with power to make final rulings thereon in accordance with the Scheme Rules;
- 1.1.35. “**OSTI**” means the Ombudsman for Short-Term Insurance that was previously afforded recognition under section 194 of the FSR Act;
- 1.1.36. “**Participant**” has the meaning defined in the Scheme Rules;
- 1.1.37. “**Principal Object**” means the principal object of the Company as set out in clause 5.2;
- 1.1.38. “**Public Benefit Activity**” means a public benefit activity as contemplated in section 30(1) read with Part 1 of the ninth schedule of the Income Tax Act or any such activities determined by the Minister of Finance by notice in the Gazette which is benevolent in nature, having regard to the needs, interests and wellbeing of the general public;
- 1.1.39. “**Public Benefit Organisation**” means a public benefit organisation as contemplated in section 30 of the Income Tax Act and approved by the Commissioner;
- 1.1.40. “**Regulations**” mean the regulations published in terms of the Companies Act

from time to time;

- 1.1.41. “**Republic**” means the Republic of South Africa;
- 1.1.42. “**Scheme Rules**” means the National Financial Ombud Scheme South Africa Rules as approved by the Board and the Ombud Council in terms of section 214 of the FSR Act from time to time;
- 1.1.43. “**Selection Committee**” means a non-statutory selection committee comprising one representative from each of:
  - 1.1.42.1. the FSCA;
  - 1.1.42.2. the NCR;
  - 1.1.42.3. the governing body of OBS;
  - 1.1.42.4. the governing body of the Credit Ombud;
  - 1.1.42.5. the governing body of OLTl;
  - 1.1.42.6. the governing body of OSTl; and
  - 1.1.42.7. the Ombud Council;
- 1.2. In this MOI, unless the context clearly indicates otherwise:
  - 1.2.1. if the due date for performance of any obligation in terms of this MOI is a day which is not a Business Day, then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding Business Day.
  - 1.2.2. Where a particular number of Days or Business Days is provided for between the happening of one event and another, the number of Days or Business Days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.
  - 1.2.3. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

## **2. CONFLICTS WITH THE MOI**

2.1. As required by the Companies Act, in any instance where there is a conflict between a provision, be it express, implied or tacit of this MOI and –

2.1.1. an alterable or elective provision of the Companies Act, the provisions of this MOI prevail to the extent of the conflict;

2.1.2. an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail to the extent of the conflict, unless the MOI imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this MOI shall prevail to the extent of the conflict.

## **3. AMENDMENT OF THE MOI**

3.1. This MOI may be amended by the Board at any time, provided that the following requirements are met:

3.1.1. The amendment is approved by more than 50% (fifty percent) of Directors appointed at the time of the proposal of the amendment;

3.1.2. The amendment is not contrary to, nor does it negate any principle set out in section 1(2) to 1(6) of the Companies Act; and

3.1.3. The amendment is approved by the Ombud Council in accordance with the FSR Act.

3.2. The Board, or any individual authorised by the Board, may alter this MOI in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar, or similar defect on the face of the document by filing a notice of the alteration.

3.3. An amendment to this MOI will take effect from the later of –

3.3.1. the date on and time at which the CIPC accepts the filing of the notice of amendment contemplated in section 16(7) of the Companies Act, which filing will take place after the Board has passed the applicable resolution and after the Ombud Council approves the amendment;

- 3.3.2. the date, if any, set out in the said notice of amendment; or
- 3.3.3. the date on which the Ombud Council approves the amendment or such later date as the Ombud Council indicates that the approved amendment should take effect;

save in the case of an amendment that changes the name of the Company, which will take effect from the later of the date set out in the amended registration certificate issued by the CIPC and the date referred to in clause 3.3.3.

- 3.4. At any time after having filed its MOI with the CIPC, the Company may file one or more translations of it, in an official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete translation of the MOI.
- 3.5. At any time after having filed its MOI with the CIPC, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the CIPC requires, must) file a consolidated revision of the MOI, as so altered or amended, provided that every such consolidated revision filed with the CIPC in terms of this clause must be accompanied by a sworn statement by a Director or a statement by an attorney or notary public, stating that it is a true, accurate and complete representation of the Company's MOI, as altered or amended up to the date of the statement.

#### **4. INCORPORATION AND NATURE OF THE COMPANY**

- 4.1. The Company is incorporated as a Non-profit Company without members.
- 4.2. The Company is incorporated in accordance with and governed by –
- 4.2.1. the unalterable provisions of the Companies Act, subject to any provision of this MOI imposing on the Company a higher standard, greater restriction, longer period of time or any similar more onerous requirement, than would otherwise apply to the Company in terms of an unalterable provision of the Companies Act;
- 4.2.2. the alterable provisions of the Companies Act, subject to the limitations, extensions, restrictions, variations or substitutions set out in this MOI;
- 4.2.3. the other provisions of the MOI; and



4.2.4. the Company Rules, if any.

## 5. OBJECT AND POLICIES

5.1. The Company is a Non-profit Company, the activities of which must be carried out in a non-profit manner, and whose objects must be interpreted in line with an object to conduct Public Benefit Activities as contemplated in the Income Tax Act and Schedule 1 to the Companies Act.

5.2. The Company is established principally to:

5.2.1. conduct the business of an industry ombud scheme, recognised in terms of section 194 of the FSR Act to operate as such;

5.2.2. receive, investigate, and resolve Complaints against Participants that are accepted in terms of the Scheme Rules, including any applicable jurisdictional and monetary limits provided for in those Rules, free of charge to the Complainants;

5.2.3. further the protection and promotion of financial customer rights in relation to Financial Institutions and financial products and services as defined in the Scheme Rules;

5.2.4. improve the quality and outcomes of Complaints handling within the industries subject to its jurisdiction through interacting with the industry, financial customers and regulators; and

5.2.5. raise awareness about the existence and role of the NFO and to the extent appropriate, disseminate educational information about financial services and financial products as defined in the Scheme Rules to financial customers.

5.3. The Company pursues a dispute resolution objective by appointing a Head Ombud and other Ombuds who, in their discretion and subject to the Scheme Rules, resolve disputes. The intended dispute resolution will be by way of one or more of the following processes in accordance with the Scheme Rules: conciliation, mediation, negotiation, recommendation and ruling.

5.4. Except to the extent necessarily implied by the stated object hereof, the purpose and powers of the Company are not subject to any restriction, limitation or

qualification, as contemplated in section 19(1)(b)(ii) of the Companies Act.

## **6. POWERS OF THE COMPANY**

6.1. Subject to the limitations, restrictions and qualifications referred to below, the Company has all the legal powers and capacity of an individual for purposes of carrying out its object referred to in clause 5, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity, or to the extent that this MOI or the Act places restrictions on the powers of the Company.

6.2 Other than in the normal course of its Public Benefit Activities, the Company is not allowed to distribute any of its funds, directly or indirectly, to any person, including any Participant, or to directly or indirectly promote the economic self-interest of any Participant, fiduciary or employee of the Company, other than by way of reasonable remuneration payable to a fiduciary or employee, and funds are to be used only for the object for which it has been established.

6.4 The Company must comply with any reporting requirements as may be determined by the Ombud Council or the FSCA, as contemplated in the FSR Act.

6.5 The Company may not use any of its resources directly or indirectly to support, advance or oppose any political party.

6.6 No office bearer of the Company, solely by virtue of being an office bearer, has any rights in the property or other assets of the Company.

## **7. INCOME AND PROPERTY OF THE COMPANY**

7.1. The Company must apply all of its assets and income, irrespective of its source, to advance its object.

7.2. Save as otherwise provided herein, the income of the Company may not be distributed to any person otherwise than in the course of undertaking Public Benefit Activities as contemplated in the ninth schedule to the Income Tax Act;

7.3. Having regard to the Principal Object of the Company, this clause does not preclude:

7.3.1. the payment or transfer of property in good faith;

- 7.32. the payment of reasonable remuneration to any officer or employee of the Company in return for any services actually rendered to the Company;
- 7.33. the payment of reasonable remuneration of any person or persons for services rendered in its formation or in the development of the Company's activities;
- 7.34. paying gratuities and pensions and establish pension schemes, in respect of its officers and employees;
- 7.35. the payment of an amount due and payable to a Director or a person appointing a Director of the Company in terms of a bona fide agreement between the Company and that person or another;
- 7.36. the payment in respect of any rights of an incorporator of the Company, or who is a Director or a person appointing a Director of the Company, to the extent that such rights are administered by the Company in order to advance the Principal Object of the Company; or
- 7.37. payment in respect of any legal obligation binding on the Company.
- 7.4. The Company may not knowingly be a party to any transaction, operation or scheme or part thereof which sole or main purpose is or was the reduction or postponement or avoidance of liability for any tax, duty or levy that, but for the transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other act administered by the Commissioner;
- 7.5. The Company may not pay excessive remuneration, as contemplated in the fourth schedule to the Income Tax Act, to a Director, employee, or other person, or any Connected Person to the aforementioned persons, having regard to what is generally considered reasonable in relation to the service rendered or such employment.

## **8. RULES OF THE COMPANY**

- 8.1. The authority of the Board to make Company Rules for the Company, as contemplated in section 15(3) to (5) of the Companies Act, is not in any manner limited or restricted by this MOI.

8.2. The Board may, subject to the necessary approval, including any necessary approval by the Ombud Council, make, amend or repeal any necessary or incidental Company Rules relating to the governance of the Company in respect of matters not addressed in the Act or this MOI by:

8.2.1. publishing a copy thereof in any manner permitted or required by the Board; and

8.2.2. filing a copy thereof with the CIPC as contemplated in regulation 5 to the Companies Act read with column 1 of CR1 of the Companies Act.

## **9. COMPOSITION OF THE BOARD<sup>1</sup>**

9.1. The initial incorporating directors of the Company (the Initial Board or the “Initial Directors”) comprise an executive member of each of the Credit Ombud, OBS, OLTi and OSTI. The purpose of the Initial Board is to register and incorporate the Company, apply for recognition of the NFO as an ombud scheme and any other attendant registrations required for the Company, and to ensure a transition to the First Residing Board.

9.2. The First Residing Board must be appointed by consensus by the Selection Committee.

9.3. The Board, from and including the First Residing Board, must comprise not less than five and not more than nine Directors.

9.4. The chairperson and at least 50% of the other Directors appointed may not:

9.4.1. work in a Financial Institution or an association of Financial Institutions or have done so in the previous three years; or

9.4.2. have (or have a close family member with) a beneficial interest of more than 5% in a Financial Institution.

9.5. All Directors appointed:

9.5.1. must be and remain resident in the Republic;

9.5.2. may not serve a financial regulator; and

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<sup>1</sup> To the extent that the First Residing Board may have been appointed prior to the registration of this MOI by the CIPC, clauses 9.1 and 9.2 are nevertheless retained for record purposes.

- 9.5.3. may not be a person contemplated in paragraphs (b) to (k) of the definition of "disqualified person" in the FSR Act.
- 9.6. A Director may not be appointed for life or an indefinite period. Subject to clause 9.7, the Directors must retire four years after their appointment and may be reappointed, subject to a maximum length of service of nine years.
- 9.7. The Board must within three calendar months of filing this MOI with the CIPC, adopt a resolution governing the appointment terms of Directors, to facilitate creating continuity through a system of staggered terms; provided that no Director may be appointed for an initial appointment term of more than four years or serve for a maximum period of more than nine years.
- 9.8. A single person may not, directly or indirectly, control the decision-making powers relating to the Company.
- 9.9. Collectively, the membership of the Board should provide a balance of understanding in respect of effective corporate governance; alternative dispute resolution; financial sector regulation; the legitimate concerns of the financial industry; and the legitimate concerns of financial consumers.

## **10. POWERS OF THE BOARD**

- 10.1. The Board has the authority to exercise all of the powers and perform all of the functions of the Company, as set out in section 66(1) of the Companies Act, except to the extent that this MOI provides otherwise; provided that the Board is prohibited from being involved in individual Complaints against Participants.
- 10.2. The business of the Company will be managed by the Board, who will pay all expenses incurred in the promotion of the Principal Object of the Company and may exercise all such powers of the Company subject to the provisions contained in this MOI, the provisions of the Companies Act and Company Rules; but no decision made by the Company in a Board meeting will invalidate any prior act of the Board which would have been valid if such decision had not been made. Without detracting from the general powers conferred by this clause 10.2, it is hereby expressly declared that the Board will have the powers to:
- 102.1. do all such things, and take all such actions, as authorised by this MOI;
- 102.2. subject to clause 10.4, appoint the Head Ombud and Divisional Lead Ombuds, following a transparent public advertising and selection

process;

- 1023. subject to clause 10.4, approve the appointment of all other Ombuds on recommendation of the Head Ombud, after the agreed recruitment process, including public advertisement, has been followed;
- 1024. delegate executive management of the Company to the Head Ombud;
- 1025. do all such things, in accordance with applicable law, that may be required from time to time to promote the Principal Objects, which include, but are not limited to:
  - 10.2.5.1 facilitate and oversee the efficient management of the Company, including by advising on strategic direction and Principal Objects of the Company and ensuring that the Company has adequate resources to handle its work;
  - 10.2.5.2 monitor, maintain and promote the independence of the NFO and the Ombuds;
  - 10.2.5.3 receive and publish an annual report;
  - 10.2.5.4 assist in ensuring that the relevant industries, consumer bodies, media and the general public understand the role, function and activities of the Company;
  - 10.2.5.5 participate in and provide input on any legislative or regulatory processes which may affect the Company and/or the Ombuds in the promotion of the Principal Object;
  - 10.2.5.6 ensuring effective relationships with stakeholders;
  - 10.2.5.7 amend the Company Rules and scope, subject to the approval of the Ombud Council;
  - 10.2.5.8 amend the Scheme Rules, subject to the approval of the Ombud Council;
  - 10.2.5.9 adopt the annual budget of the Company;
  - 10.2.5.10 purchase or otherwise acquire for the Company any property, rights or privileges which the Company is authorised to acquire at a price and generally upon such terms and conditions as the Board considers appropriate;

- 10.2.5.11 from time to time, at the Board's discretion, appoint persons as employees; remove or suspend any employee, whether temporary or permanent (subject to clause 10.4.3.2 and 10.4.5.2 in relation to Ombuds); determine their functions, duties, and responsibilities; and determine their salaries or emoluments;
- 10.2.5.12 engage, with due regard being had to the Principal Object of the Company, consultants or technical advisers, and to determine the period of their engagement and determine their powers, duties and fix their reward;
- 10.2.5.13 borrow, lend or secure the repayment of money for the purpose of the Company on such terms and in such manner as they may think fit;
- 10.2.5.14 open any bank account necessary for the Company to operate;
- 10.2.5.15 determine the required funding from the Participants; and raise and receive contributions from Participants;

10.3. In addition to and without limitation of the powers expressly conferred upon the Directors by the Companies Act or this MOI, they may:

- 10.3.1. exercise or delegate to any one or more persons all or any such powers; and
- 10.3.2. do or delegate to any one or more persons the doing of all or any such acts (including the right to sub-delegate), as may be exercised or done by the Company.

**10.4. Appointment of Ombuds**

10.4.1 The Board must, after following the process in clause 10.2.2 by simple majority vote appoint and, subject to clause to 10.4.5, determine the conditions of employment of the Head Ombud (CEO) and Divisional Lead Ombuds, including their remuneration, which remuneration must be market related with due regard to the size of the organisation, and the mandate and complexity of the role.

1042 The Head Ombud holds office for an initial period of at least three years, but not exceeding a period of five years. The Head Ombud may be re-appointed by the Board for a further period or periods after the initial period that the

Board deems appropriate, provided that such further period or periods do not exceed five years in total. The Board must notify the Head Ombud at least one year before the end of the initial period whether they are to be re-appointed; or

- 1043 The Head Ombud holds office in term of clause 10.4.2 or until they -
- 10.4.3.1 resign by giving three months' notice in writing to the Company; or
- 10.4.3.2 are dismissed or removed from office in accordance with clause 10.4.5.2, which dismissal or removal must be confirmed by a 75% vote of the Board (provided that the chairperson is present and votes at the meeting of the Board).
- 1044 An Ombud may not be a Director of the Company, may not have (or have a close family member with) a beneficial interest of more than 5% in a Financial Institution, and may not be a person who works in a Financial Institution or an association of Financial Institutions; and in addition the Head Ombud or a Divisional Lead Ombud may not be a person who has worked in a Financial Institution or an association of Financial Institutions in the previous three years.
- 1045 The terms of employment of the Head Ombud and any other Ombud must -
- 10.4.5.1 secure the decision-making independence of the Ombud from the Board, Participants, consumer bodies, financial regulators and political influence;
- 10.4.5.2 protect the Ombud from removal from office, other than by the Board on grounds of incompetence, gross misconduct, or inability to effectively carry out his or her duties;
- 10.4.5.3 require the Ombud to act in the public interest, to disclose any conflict of interest, and not to be involved in any Complaint where they have a conflict;
- 10.4.5.4 require the Ombud to preserve the independence, integrity, and fairness of the decision-making process; and
- 10.4.5.5 protect the Ombud's remuneration from being influenced by the outcome of cases.
- 1046 Despite clause 10.2.2, any employee or official of the Company who performed the function of an Ombud for the Credit Ombud, OBS, OLTi or OSTI immediately before 1 March 2024, may perform such function for the NFO on terms of employment approved by the Board, which terms must comply with clause 10.4.5, and there will be no requirement for the Company or the Board to



advertise or conduct a selection process to enable them to do so.

## **11 APPOINTMENT AND REMOVAL OF DIRECTORS**

11.1 Subject to schedule 1 of the Companies Act and this MOI, further Directors, after the appointment of the Initial Directors and the First Residing Board, shall be appointed by the Board itself after a transparent process following a public advertisement. There may be no Director appointed by any other person or ex officio Directors as contemplated in section 66(4) of the Companies Act.

11.2 The Board may remove any Director by a majority vote on the grounds of incompetence, gross misconduct, or inability to effectively carry out their duties or that the Director is no longer committed to furthering the Principal Objects of the Company, once notice has been given and the Director has been given a reasonable opportunity to make a presentation as contemplated in section 71(2) of the Companies Act. This power remains regardless of:

11.2.1 anything mentioned in this MOI;

11.2.2 any agreement between the Company and the Director; or

11.2.3 the fact that the Director's agreed term of appointment has not expired.

11.3 Such removal will be without prejudice to any claim the Director may have for damages or breach of any contract of service between him and the Company.

11.4 In addition to the provisions of section 69 of the Companies Act, a person ceases to be a Director and a vacancy arises on the Board if the Director:

11.4.1 is declared mentally unfit by a registered medical practitioner;

11.4.2 resigns office by notice in writing to the Company;

11.4.3 compounds with their creditors;

11.4.4 has a direct or indirect financial or other interest in any contract or proposed contract with the Company and fails to declare the interest and the nature thereof in the manner required by the Companies Act;

11.4.5 is absent from two meetings of Directors in any financial year of the Company without the leave of the Board, and the Board resolves that the office must be vacated;

11.4.6 becomes a person contemplated in paragraphs (b) to (k) of the definition of "disqualified person" in the FSR Act; or

11.4.7 no longer qualifies as a Director in terms of this MOI.

11.5 Any failure by the Company at any time to have the minimum number of Directors or types of Directors as required by the Act or this MOI, does not limit or negate the authority of the Board, or invalidate anything done by the Board.

11.6 Notwithstanding anything to the contrary herein contained, should there at any point in time be less than three Directors, the remaining Directors must appoint Directors to allow for compliance with the requirement relating to the minimum number of directors and types of Directors as in accordance with this MOI.

11.7 The Directors will elect a chairperson and deputy chairperson for the Board and each Board committee by majority vote, all of whom shall be Directors who are not associated with the financial industry.

11.8 Notwithstanding the provisions of clause 11.7, the chairperson or deputy chairperson of the Board may not hold office as such for a period longer than four years. The chairperson and deputy chairperson are eligible for re-election as such.

## **12 ALTERNATE DIRECTORS**

A Director may not nominate any other person to act as Alternate Director in the Director's place during their absence or inability to act as such.

## **13 FINANCIAL ASSISTANCE**

13.1 The Company is prohibited from providing any Director with financial assistance.

13.2 Clause 13.1 must not be construed to prohibit the Company from paying Directors remuneration for the performance of their duties and reimbursement of costs incurred in the course thereof.

## **14 DIRECTORS' MEETINGS**

14.1 Save as may be provided otherwise herein, the Directors may meet for the

despatch of business, adjourn, and otherwise regulate their meetings as they think fit subject to the Company Rules, if any.

14.2 Despite the provisions of clause 14.1, the Board must meet at least three times per year.

14.3 The chairperson, or in their absence the deputy chairperson, presides over all meetings of Directors. If neither the chairperson nor deputy chairperson is present within ten minutes of the time appointed for holding the meeting, the Directors present must choose one of their number to be chairperson of such meeting, provided such person is not a Director associated with the financial industry.

14.4 A Director authorised by the Board or the chairperson (or in their absence, the deputy chairperson) -

14.4.1 may convene a meeting of the Board at any time; and

14.4.2 must convene a meeting of the Board if required to do so by at least 3 (three) Directors.

14.5 The Board has the power to –

14.5.1 consider any matter or adopt any resolution other than at a meeting as set out in section 74 of the Companies Act and, accordingly, any resolution that could be voted on at a meeting of the Board may instead be adopted by the submission of a written vote of a majority of the Directors, provided that the majority of those submitting a vote must be Directors not associated with the financial industry, and provided that each Director has received notice of the matter to be decided;

14.5.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3) of the Companies Act, provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;

- 14.5.3 determine the manner and form of providing notice of its meetings as set out in section 73(4) of the Companies Act; and
- 14.5.4 proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) of the Companies Act, and the powers of the Board in respect of the above matters are not limited or restricted by this MOI.
- 14.6 A meeting of the Board must, unless otherwise agreed by the Directors, take place at the premises of the Company.
- 14.7 The quorum requirement for a Directors' meeting (including an adjourned meeting), the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5) of the Companies Act, subject only to clause 14.7.2 and clause 14.7.5, and accordingly –
- 14.7.1 if all of the Directors –
- 14.7.1.1 acknowledge actual receipt of the notice convening a meeting; or
- 14.7.1.2 are present at a meeting; or
- 14.7.1.3 waive notice of a 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;
- 14.7.2 a majority of the Directors must be present at a meeting, and the majority of those present and voting must be Directors not associated with the financial industry, before a vote may be called at any meeting of the Directors;
- 14.7.3 each Director has one vote on a matter before the Board;
- 14.7.4 subject to clause 14.7.2, a majority of the votes cast on a resolution is sufficient to approve that resolution;
- 14.7.5 in the case of a tied vote –
- 14.7.5.1 the chairperson may not cast a deciding vote in addition to any deliberative vote; and
- 14.7.5.2 the matter being voted on fails.
- 14.8 Resolutions adopted by the Board –

- 14.8.1 must be dated and sequentially numbered; and
- 14.8.2 are effective from the date of the resolution, unless any resolution states otherwise.

**15 MINUTES OF THE BOARD MEETING**

15.1 The Directors must cause minutes as contemplated in section 24 of the Companies Act, to be kept in books to be provided for the purpose:

15.1.1 of all appointments of officers made by the Board;

15.1.2 of the names of the Directors present at each Board meeting, and of any committee of Directors; and

15.1.3 of all resolutions and proceedings at all meetings of the Company and the Directors, and of committees of Directors, and every Director present at any Board meeting or committee of Directors must sign his/her name in a book to be kept for that purpose. The minutes of the meetings must be distributed at five Business Days before the next meeting and will be confirmed as a true record of proceedings at the next meeting of Directors and signed by the chairperson.

**16 INDEMNIFICATION OF DIRECTORS**

16.1 Each:

16.1.1 Director, company secretary and other officer of the Company; and

16.1.2 person employed by the Company as its auditor,

16.1.3 will be indemnified by the Company against any liability incurred by them from time to time in that capacity that is not inconsistent with the provisions of sections 77 and 78 of the Companies Act.

16.2 The Company:

16.2.1 may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

16.2.2 may directly or indirectly indemnify a Director for expenses contemplated in clause 16.2.1, irrespective of whether it has advanced those expenses, or if the proceedings are abandoned or the Director is exculpated or which arises in respect of any liability for which the Company may indemnify the Director, in terms of sections 78(5) and 78(6) of the Companies Act.

- 16.3 The Company indemnifies a Director in respect of any liability arising other than as contemplated in section 78(6) of the Companies Act.
- 16.4 The Company may purchase insurance to protect:
- 16.4.1 a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with section 78 (5) of the Companies Act; or
  - 16.4.2 the Company against any contingency including but not limited to any expenses:
    - 16.4.2.1 that the Company is permitted to advance in accordance with section 78(4)(a) of the Companies Act; or
    - 16.4.2.2 for which the Company is permitted to indemnify a Director in accordance with subsection 78(4)(b) of the Companies Act; or
    - 16.4.2.3 any liability for which the Company is permitted to indemnify a Director in accordance with section 78(5) of the Companies Act.
  - 16.4.3 The Company will be entitled to claim restitution from a Director of the Company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

## **17 BOARD COMMITTEES**

- 17.1 The Board –
- 17.1.1 may appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1) of the Companies Act; and/or
  - 17.1.2 may include in any such committee persons who are not Directors, as set out in section 72(2)(a) of the Companies Act, and the power of the Board in this regard is not limited or restricted by this MOI.
  - 17.1.3 must, as a minimum, appoint an Audit and Risk committee, and a Remuneration Committee.
- 17.2 The authority of a committee appointed by the Board as set out in section 72(2) (b) and (c) of the Companies Act is not limited or restricted by this MOI.

17.3 Each committee must act in accordance with its mandate as set out in that committee's terms of reference, approved by the Board.

## **18 COMPANY SECRETARY**

18.1 Subject to the provisions of clause 18.2 the company secretary must be appointed by the Board for such term, at such remuneration and upon such conditions as the Board may deem fit.

18.2 The company secretary must have the requisite knowledge and experience and be a permanent resident of the Republic.

18.3 The Board must fill any vacancy in the office of company secretary within sixty Business Days after such vacancy arises by a person whom the Directors consider having the requisite knowledge and experience.

## **19 FUNDAMENTAL TRANSACTIONS**

19.1 As contemplated in item 2(1) of schedule 1 to the Companies Act, the Company may not –

19.1.1 amalgamate or merge with, or convert to, a profit company; or

19.1.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

## **20 EXTERNAL AUDITOR**

20.1 The Company must appoint an Auditor each year. If the Company appoints a firm as its Auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of Auditor.

20.2 Auditors must be appointed, and their duties regulated in accordance with the Companies Act and any other applicable law.

20.3 Subject to the provisions of the Companies Act, all actions of any person or firm acting as Auditor are valid against all persons dealing in good faith with the Company, notwithstanding any shortcoming with regard to the Auditor's appointment.



## **21 ANNUAL FINANCIAL STATEMENTS**

21.1 The financial year end of the Company will be the last day of December each year.

21.2 The Company must have a banking account which is in the name and control of the Company from which its financial transactions will be conducted.

21.3 Deeds and other instruments of conveyance, instruments to satisfy or release a lien of mortgages, and deeds of trust or other security instruments, upon due authorisation of the Directors, will be executed on behalf of the Company by the chairperson or any Director duly appointed for such purpose by the Board, and countersigned by the Head Ombud.

21.4 Deeds and other instruments of conveyance, instruments to satisfy or release a lien of mortgages, and deeds of trust or other security instruments, upon due authorisation of the Directors, will be executed on behalf of the Company by the chairperson or any Director duly appointed for such purpose by the Board.

21.5 The Company shall cause Company and accounting records to be created and maintained at the registered office of the Company in the prescribed form as contemplated in sections 24, 25 and 28 of the Companies Act.

21.6 The Company must comply with all reporting requirements determined by the Commissioner to be approved as, and remain, a Public Benefit Organisation in terms of section 30 of the Income Tax Act. The Board must ensure that provisions of the Income Tax are complied with, which specifically includes the provisions of section 30 of the Income Tax Act.

21.7 The Company must keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of:

21.7.1 the Companies Act;

21.7.2 any other law with respect to the preparation of financial statements to which the Company may be subject;

21.7.3 the Regulations; and

21.7.4 this MOI.

- 21.8 the Company must each year prepare annual financial statements within six months after the end of its financial year.
- 21.9 The Company must, in particular, in order to satisfy its obligations in Regulation 25(4), maintain a register of revenue received from donations, grants or in terms of any other funding contracts or arrangements with any party, to the extent applicable.
- 21.10 In the event that the annual financial statements of the Company –
- 21.10.1 are required to be audited pursuant to Regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Companies Act, the annual financial statements must be so audited in accordance with the relevant provisions of the Act; or
- 21.10.2 are required to be independently reviewed, as contemplated in section 30(2)(b)(ii)(bb), or as otherwise contemplated in the Companies Act, the annual financial statements must be so independently reviewed in accordance with the relevant provisions of the Companies Act; or
- 21.10.3 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Companies Act, or a regulatory order, the Company must comply with its relevant obligations in that regard.

## **22 ACCESS TO COMPANY RECORDS**

The public has a right to inspect the register of Directors of the Company upon payment of the prescribed fee for any such inspection.

## **23 LIMITATION OF LIABILITY**

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

## **24 WINDING UP/LIQUIDATION**

- 24.1 The Company may be voluntarily wound-up as contemplated in section 80 of the Companies Act.

- 24.2 Upon dissolution of the Company, its net assets must be distributed in the manner set out below determined in accordance with Item 1(4)(b) of schedule 1 to the Companies Act in that:
- 24.2.1 no past or present Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 24.2.2 the entire net value of the Company must be distributed to one or more Non-profit Companies, voluntary associations, non-profit trusts or public entities having objectives similar to the Principal Object, provided that such Non-profit Company, r voluntary association, non-profit trust or public entity must be:
- 24.2.2.1 approved by the Ombud Council for the purposes of receiving the value; and
- 24.2.2.2 approved as a Public Benefit Organisation by the Commissioner; or
- 24.2.2.3 an institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole and or Principal Object the carrying on of any Public Benefit Activities; or
- 24.2.2.4 a department of state or administration in the national, provincial or local sphere of government in the Republic as contemplated in section 10(1)(a) or (b) of the Income Tax Act.
- 24.3 In the event that the net assets of the Company cannot be distributed as set out in clause 24.2.2 above, the distribution of assets must take place as resolved by:
- 24.3.1 the Company's Directors, at or immediately before the time of its dissolution; or
- 24.3.2 where the Company's Directors fail to make such a determination as contemplated in clause 24.3.1, by a court competent to do so.
- 24.4 The Company must advise the Ombud Council of its intention to voluntarily wind up the Company and in that event comply with the Ombud Council's

requirements relating to revocation of the Company's recognition as an industry ombud scheme for purposes of the FSR Act.