

Republic of South Africa Companies  
Act, 2008

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

Name of company:

**THE MORTGAGE ORIGATION REGULATORY COMPANY OF SOUTH AFRICA NPC**

The shortened name of the Company is:

**MORCSA**

Registration No.:

**2024/090860/08**

Registration Date:

**26 February 2024**



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## 1 INTERPRETATION

In this MOI -

- 1.1 words which are not otherwise defined in paragraph 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 **"Accreditation Rules"** means the written rules, approved by the Board from time to time, setting out, inter alia, the eligibility criteria to qualify as a Corporate Member, Key Individual or Practitioner Member, the process to apply to become a Member or Key Individual, and the requirements to be met by Members and Key Individuals to remain registered and in good standing, it being recorded that the Board shall be entitled and, if required by the Applicable Laws and/or the Industry Regulator, obliged to consult with the Industry Regulator in respect of the Accreditation Rules;
  - 1.2.2 **"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;
  - 1.2.3 **"Board"** means the board of directors of the Company as constituted from time to time in terms of this MOI;
  - 1.2.4 **"Business Day"** means a day which is not a Saturday, Sunday or a public holiday in the RSA;
  - 1.2.5 **"Chief Executive Officer"** has the meaning ascribed thereto in paragraph 19.3 below;
  - 1.2.6 **"Chairperson"** means the chairperson of the Board, elected from time to time in accordance with paragraph 15.11 of this MOI;
  - 1.2.7 **"Code of Good Practice"** means the written document, approved by the Board, setting out, inter alia, the code of conduct (including principles relating to treating customers fairly) that apply to the manner in which Mortgage Origination Services are to be rendered by Members to Consumers, the disciplinary procedures and code that will apply to Members and Key Individuals in the event of a contravention of the Code of Good Practice and all other matters relevant to regulating and monitoring the Industry, it being recorded that the Board shall be entitled and, if required by Applicable Laws and/or the Industry Regulator, obliged to consult with the Industry Regulator in respect of the Code of Good Practice;
  - 1.2.8 **"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 34 of 1997, as such office may be changed and replaced from time to time;
  - 1.2.9 **"Companies Act"** means the Companies Act 71 of 2008;
  - 1.2.10 **"Company" or "MORCSA"** means the Mortgage Origination Regulatory Council of South Africa NPC, or by whatever other name it may be known from time to time;

- 1.2.11 **“Complaints Framework”** means the written document, approved by the Board, setting out the complaints that can be referred for resolution, the procedure to lodge a complaint, the dispute resolution mechanisms to be employed to resolve complaints and the constitution of the complaint resolution committee, it being recorded that the Board shall be entitled and, if required by Applicable Laws and/or the Industry Regulator, obliged to consult with the Industry Regulator in respect of the Complaints Framework;
- 1.2.12 **“Conduct Committee”** means the Conduct Committee constituted in terms of the Governance Framework, comprising of persons that are not Members or Key Individuals, directors, officers or employees of Members;
- 1.2.13 **“Confidential Information”** includes, without limitation, all information pertaining to the Company’s (or a Member’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. Such Confidential Information will include that a Member or Key Individual is subject to any disciplinary proceedings while such proceedings are sub-judice;
- 1.2.14 **“Connected Person”** has the meaning ascribed thereto under section 1 of the Income Tax Act;
- 1.2.15 **“Consumer”** means any person or entity which engages a Member to render Mortgage Origination Services to that person or entity;
- 1.2.16 **“Control”** has the meaning ascribed thereto in section 2(2) of the Companies Act, and **“Controlled”** and **“Controlling”** have corresponding meanings;
- 1.2.17 **“Corporate Members”** means registered members of the Company who (i) employ Practitioner Members; (ii) pay the Membership Contribution; and (iii) comply with the requirements set out in the Accreditation Rules to be Corporate Members of the Company; and (iv) whose details, along with the relevant Key Individuals’ details, are entered by the Company into the Members’ Register;
- 1.2.18 **“Deliver” or “Delivery”** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with paragraph 27 and the Companies Act;
- 1.2.19 **“Electronic Address”** means, in regard to Electronic Communication, any email address furnished to the Company by any Member;
- 1.2.20 **“Electronic Communication”** means any form of data communication that takes place through electronic means (carried over both wire and wireless systems) and includes, without limitation, facsimile, telex communication, email, instant messaging, VoIP, video conferencing and non-voice digitized transmissions;
- 1.2.21 **“FSRA”** means the Financial Sector Regulation Act 9 of 2017, as amended;
- 1.2.22 **“General Meeting”** means any ordinary or extraordinary meeting of the Members;

- 1.2.23 **“Governance Framework”** means the framework, as determined and approved by the Board from time to time including, without limitation, the Accreditation Rules, the Code of Good Practice and the Complaints Framework, it being recorded that the Board shall be entitled and, if required by Applicable Laws and/or the Industry Regulator, obliged to consult with the Industry Regulator in respect of the Governance Framework;
- 1.2.24 **“Income Tax Act”** means the Income Tax Act 58 of 1962, as amended;
- 1.2.25 **“Industry”** means the mortgage origination industry in the RSA including all relevant stakeholders involved in the provision of Mortgage Origination Services;
- 1.2.26 **“Industry Regulator”** means the statutorily authorized regulatory body that regulates the Industry in accordance with Applicable Laws, once effective regulation commences (as confirmed by the Board), it being the expectation that the Industry Regulator will be the Financial Sector Conduct Authority, as authorized in terms of the FSRA;
- 1.2.27 **“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;
- 1.2.28 **“Key Individuals”** means, in relation to a Corporate Member, the directors, officers, trustees or members of that Corporate Member;
- 1.2.29 **“Member’s Contribution”** has the meaning ascribed thereto in paragraph 6;
- 1.2.30 **“Membership”** means membership of the Company and “Members” will include Corporate Members and Practitioner Members;
- 1.2.31 **“Members’ Register”** has the meaning ascribed thereto in paragraph 5.2.1;
- 1.2.32 **“MOI”** means this Memorandum of Incorporation, together with any annexures thereto, as same may be amended from time to time;
- 1.2.33 **“Practitioner Member/s”** means any natural person who provides Mortgage Origination Services to Consumers and –
- 1.2.33.1 complies with the requirements set out in the Accreditation Rules to be a Practitioner Member of the Company and whose name is entered by the Company into the Members’ Register; and/or
- 1.2.33.2 who has applied to be a Practitioner Member in terms of the Accreditation Rules and whose application has been accepted as contemplated in the Accreditation Rules;
- 1.2.34 **“Mortgage Origination Services”** means the provision by Members to Consumers of financial services relating to the provision of credit (“financial services” and “credit” both as defined in the FSRA) and includes services entailing the submission of an application, on behalf of the Consumer, to one or more credit providers (registered as such in terms of the National Credit Act 34 of 2005, as amended) for financing to acquire or refinance an immovable property, renovations to an immovable property and/or any products that accede to an immovable property by way of a mortgage bond product offered by those credit providers;

- 1.2.35        **“Nominations Committee”** means the Nominations Committee constituted in terms of the Governance Framework, comprising of persons that are not Members or Key Individuals, directors, officers or employees of Members;
- 1.2.36        **“Non-Voting Members”** means those registered Members of the Company that are registered in the Members’ Register and are not Voting Members;
- 1.2.37        **“Present”** means, in relation to any Person entitled to Exercise any Voting Rights at General Meetings, that Person is:
- 1.2.37.1        present in person; or
- 1.2.37.2        represented by -
- 1.2.37.2.1        proxy; or
- 1.2.37.2.2        an individual authorised by a letter of representation or in such other manner as the Board may determine in respect of a Corporate Member which is a juristic person), it being recorded that any Key Individual or the chief executive officer of the relevant Corporate Member will deemed to be so authorised; or
- 1.2.37.2.3        an agent appointed under a general or special power of attorney (in respect of any individual);
- 1.2.38        **“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;
- 1.2.39        **“Regulations”** means regulations published pursuant to the Companies Act;
- 1.2.40        **“Rights”** means those rights granted to a particular category of Member pursuant to this MOI and/or any additional rights granted to such category of Member in terms of Applicable Laws;
- 1.2.41        **“Round Robin Resolution”** means a resolution passed other than at a meeting of the Voting Members or the Directors, as the case may be, being -
- 1.2.41.1        in the case of the Members, a resolution as contemplated in section 60 of the Companies Act; and
- 1.2.41.2        in the case of Directors, a resolution as contemplated in section 74 of the Companies Act;
- 1.2.42        **“RSA”** means the Republic of South Africa;
- 1.2.43        **“Secretary”** means the secretary of the Company as appointed by the Board in accordance with paragraph 24;
- 1.2.44        **“Voluntary Association”** means the unincorporated voluntary association conducting its affairs under the name and style of the “Mortgage Origination Council of South Africa” and was the established as the predecessor of the Company;
- 1.2.45        **“Voting Members”** means those registered Members of the Company who meet the Voting Eligibility Criteria and are registered as Voting Members in the Members’ Register;

- 1.2.46 “**Voting Eligibility Criteria**” means any Member that employs, whether directly or indirectly, at least 5 (five) or more Practitioner Members;
- 1.3 all references to “**Writing**” in this MOI includes Electronic Communications, but in relation to Members only to the extent that the relevant Member 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 paragraph in this MOI, the term so defined, unless it is clear from the paragraph in question that the term so defined has limited application to the relevant paragraph, 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 purposes of serving, supporting, and representing the Members and the interests of Consumers.
- 3.2 The main objects of the Company are as follows –
- 3.2.1 to ensure the long-term sustainability and credibility of the Industry;
- 3.2.2 to serve, support and represent the Industry within the wider financial services industry;
- 3.2.3 to create and maintain a register of Members and Key Individuals that are in good standing and have proved that they comply with the accreditation criteria set out in the Accreditation Rules;

- 3.2.4 to maintain appropriate standards, qualifications and codes of conduct which Members and/or Key Individuals must comply with in order to render Mortgage Origination Services in the Industry, thereby creating legitimacy as an Industry;
- 3.2.5 to support appropriate regulation and standards within the Industry to the benefit of Members and Consumers;
- 3.2.6 to engage with any regulatory authorities and make submissions and representations on behalf of the Industry;
- 3.2.7 to promote the Industry's development, growth, public standing, and the general society's confidence therein and knowledge of the Industry, by such means as may be deemed appropriate from time to time;
- 3.2.8 engage with credit providers and related industry regulators and practitioners on matters affecting the Industry; and
- 3.2.9 to protect and promote Consumer rights and the improvement of control and quality with regards to the Mortgage Origination Services rendered by the Industry to Consumers.
- 3.3 In promoting the main objects referred to above and implementing its mandate on behalf of the Members, the Company shall itself observe and promote the following guiding principles with respect to its operations, having regard to the best interests of the Industry and the general public-
  - 3.3.1 the advancement of the principle of treating Consumers fairly including –
    - 3.3.1.1 the securing of a mortgage loan product for a Consumer that is appropriate for that Consumer;
    - 3.3.1.2 avoiding a conflict of interest with Consumers;
  - 3.3.2 the promotion of the operation of free markets and encourage fair competition in the provision of Mortgage Origination Services in the Industry;
  - 3.3.3 the promotion of the inherent value and benefit of investing in immovable property, and the promotion of access to such mortgage loan products and services for all South Africans;
  - 3.3.4 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;
  - 3.3.5 practicing and promoting ethical and equitable behaviour by Members;
  - 3.3.6 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
  - 3.3.7 seeking to resolve any differences or disputes with, or between, Members, by acting at all times in support of practices that encourage good governance, and which are in compliance with the Code of Good Practice.



## 4 POWERS AND CAPACITY OF THE COMPANY

### 4.1 Legal capacity

4.1.1 The Company has all of the legal capacity of an individual, to the extent possible subject to any restrictions, limitations or qualifications arising from this MOI.

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

### 4.2 Advancing the main objects of the Company

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. Accordingly, the Company shall, in accordance with section 30B(2) of the Income Tax Act -

4.2.1 not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives;

4.2.2 the Company is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;

4.2.3 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, Key Individual or minority group; and

4.2.4 the Company must as part of its dissolution transfer its assets to -

4.2.4.1 another company approved by the Commissioner in terms of section 30B(2) of the Income Tax Act;

4.2.4.2 a public benefit organisation approved in terms of section 30 of the Income Tax Act;

4.2.4.3 an institution, board or body which is exempt from tax under section 10(1)(cA)(i) of the Income Tax Act; or

4.2.4.4 the government of the Republic in the national, provincial or local sphere.

### 4.3 Joint ventures and partnerships

The Company shall be entitled to 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.

### 4.4 Establishment continuity & donations

The Company shall be -

4.4.1 entitled and obliged to acquire and/or assume, the assets and liabilities of the Voluntary Association, including the obligation to repay (or, at the election of the Company, to credit as advances against future fees) any outstanding loan accounts owed to any Member that previously funded the Voluntary Association;

4.4.2 entitled to make grants and donations in pursuance of its main objects, provided that no such grants or donations may be made to Members, Key Individuals, Directors or to Connected Persons of the Directors; and

#### 4.5 Funding

Substantially the whole of the Company's funding must be derived from the Members or from an appropriation by the government of the Republic in the national, provincial or local sphere.

#### 4.6 Payments, distributions and remuneration

4.6.1 Subject to paragraph 4.6.2, the Company shall be entitled to -

4.6.1.1 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;

4.6.1.2 pay staff salaries, pensions, and other benefits, and to establish pension and incentive schemes, in respect of its employees.

4.6.2 Notwithstanding the provisions of paragraph 4.6.1, the Company shall not -

4.6.2.1 distribute in specie or in kind any of its assets among the Members, Key Individuals, Directors or Connected Persons to Directors;

4.6.2.2 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 Member, Key Individual, Director or Connected Person to a Director, except as -

4.6.2.2.1 remuneration to the Chief Executive Officer or any other officers or employees of the Company including payment of *per diems* allowance and the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director; or

4.6.2.2.2 reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company;

4.6.2.2.3 reasonable payment of, or reimbursement for, expenses incurred to advance the main objects of the Company;

4.6.2.2.4 as 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;

4.6.2.2.5 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

4.6.2.2.6 in respect of any binding legal obligation on the Company,

provided that any such payment to any employee, office bearer, Member, Key Individual or other person any remuneration, as defined in the Fourth Schedule to the Income Tax Act, must not be excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered or goods delivered.

#### 4.7 Maintaining independence

4.7.1 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.

- 4.7.2 No single person may directly or indirectly control the decision-making powers relating to the Company.
- 4.7.3 No Member may directly or indirectly have any personal or private interest (as such terms are contemplated in the Income Tax Act) in that Company.
- 4.7.4 The Company may not have a share or other interest in any business, profession or occupation which is carried on by any Member.

#### 4.8 Reporting

- 4.8.1 The Board will submit any amendment of this MOI to the Commissioner within 30 (thirty) days of its amendment;
- 4.8.2 The Company will comply with such reporting requirements as may be determined by the Commissioner from time to time.

#### 4.9 Avoidance arrangements

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.

#### 4.10 Governance Framework

- 4.10.1 The Company shall establish and publish the various codes, rules and documents comprising the Governance Framework which shall initially be approved by the Board.
- 4.10.2 This MOI and all of the codes, rules and documents comprising the Governance Framework shall be binding on the Members and Key Individuals and all Members and Key Individuals shall comply with Governance Framework and any decisions taken by the Company in terms of and under this MOI and the Governance Framework.
- 4.10.3 The Accreditation Rules may be updated, amended and/or replaced by the Conduct Committee from time to time, subject to the approval by the Board and by Special Resolution of the Voting Members.
- 4.10.4 The Code of Good Practice may be updated, amended and/or replaced by the Conduct Committee from time to time, subject to the approval by the Board and by Special Resolution of the Voting Members.

### **5 MEMBERS**

#### 5.1 Membership

- 5.1.1 The minimum number of Members shall be 5 (five) Members, and there shall be no limitation as to the maximum number of Members. Should there at any time be 5 (five) or less Members, then all such Members shall be Voting Members and have a minimum of 1 (one) vote each until such time as there are again more than 5 (five) Members.

- 5.1.2 If, at any time, the number of Members remaining should fall below the minimum stipulated in paragraph 5.1.1 above, the remaining Members 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.
- 5.1.3 Members will either be Voting Members or Non-Voting Members, each of which having the Rights and obligations stipulated in this MOI and the Companies Act.
- 5.1.4 The Rights attaching to each category of Membership may be amended from time to time by Special Resolution of the Voting Members.
- 5.1.5 Subject to 5.1.6, to become a Member of the Company, a person or entity must –
- 5.1.5.1 render Mortgage Origination Services;
  - 5.1.5.2 complete and lodge a Membership application in accordance with the Accreditation Rules;
  - 5.1.5.3 ensure that all information provided when applying for Membership is true and accurate;
  - 5.1.5.4 satisfy such other criteria as may be set out in the Accreditation Rules; and
  - 5.1.5.5 after consideration of the application, be admitted into Membership by resolution of the Nominations Committee and thereafter recorded as a Member in the Members' Register.
- 5.1.6 The initial Members of the Company will be the incorporators. During the interim period between the incorporation of the Company and the date on which the Board approves the first version of the Accreditation Rules, any person or entity that renders Mortgage Origination Services and pays the Members' Contribution (or on whose behalf the Members' Contribution) is paid to the Company shall be entitled to be Members of the Company and shall cease to be Members of the Company if they fail to meet the requirements to remain Members of the Company in accordance with the Accreditation Rules once approved.
- 5.1.7 Membership of the Company shall commence on the date on which the Member's name is entered into the Members' Register.
- 5.1.8 Voting Members are entitled to exercise voting rights at meetings of the Members. All Members are obliged to make Contributions as determined by the Board from time to time.
- 5.1.9 No Member shall be entitled to transfer its Membership to any other Person, or to alienate or exercise any Rights vested in or Controlled by such Member (as required to be so vested or Controlled) without the prior written approval of the Board.
- 5.2 Register of Members
- 5.2.1 The Company shall, from time to time, keep a register of Members ("Members' Register") which shall indicate whether they are (i) Voting Members or Non-Voting Members; (ii) a Corporate Member or a Practitioner Member; and (iii) in relation to Corporate Members only, the Key Individuals of that Corporate Member. The Company shall have the right, but shall not be obliged, to publish these registers and/or make extracts of these registers available on its website for public use in order to search whether an entity or practitioner is a Member.

5.2.2 The register of Members shall be maintained and kept at the Company's registered address.

### 5.3 Termination of Membership

5.3.1 A Member's Membership will be terminated –

5.3.1.1 if the Member, being a natural person, dies or is subject to sequestration proceedings, whether provisional or final;

5.3.1.2 if the Member, being a corporate or juristic entity, ceases to exist, is deregistered or is subject to liquidation proceedings, whether provisional or final;

5.3.1.3 if the Member fails to meet the requirements set out in the Accreditation Rules to be or remain a registered Member or breaches the Code of Good Practice and is removed in accordance with the provisions of the Code of Good Practice; and/or

5.3.1.4 upon the passing of a resolution by the Conduct Committee in favour of the removal of such Member.

5.3.2 Notwithstanding anything to the contrary contained in this MOI, the termination of Membership shall in no way release a Member of any obligation undertaken by that Member prior to the termination of its Membership.

### 5.4 Suspension

The Conduct Committee may suspend Membership for such period as it deems appropriate either summarily or such notice period as it deems fit if –

5.4.1 the conduct of the Member has or is likely to cause reputational risk to the Company;

5.4.2 the Member has committed any act or failed to take any action that justifies that Members' suspension in terms of the Code of Good Practice; and

5.4.3 the Member fails to pay any Contributions, without prior arrangement with the Board.

### 5.5 Members' and Key Individuals' obligations

5.5.1 Each Member and Key Individual must comply with the provisions of this MOI and all of the codes, rules and documents comprising the Governance Framework. Accordingly, every Member and/or Key Individual who –

5.5.1.1 receives a request for information or response to a complaint or is the subject of an inquiry or any notice to attend a meeting in terms of the Governance Framework must provide the required information or response or attend the meeting in accordance with the terms of such notice unless there is a reasonable excuse for failing so to do; and

5.5.1.2 fails to comply with any request contemplated in paragraph 5.5.1.1 may be required to defray the reasonable costs incurred by the Company to obtain the information itself or to reconvene the meeting.

5.5.2 To the extent required in terms of the Governance Framework, every Member must maintain professional indemnity insurance of a minimum amount, determined by the Board as being reasonable. Every Member must pay all premiums under the professional indemnity insurance policy and must comply with the terms of the policy.

## **6 CONTRIBUTIONS**

- 6.1 The Board shall be entitled to determine, and to require the payment by Members of, such annual, monthly 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). In determining the Member's Contribution, the Board will have regard to all factors considered by the Board to be relevant including, without limitation, the size of the Members, the number of Practitioners Members employed by the Members, the value and/or volume of Mortgage Origination Services rendered by the Members and the commission earned by Members from Mortgage Origination Services rendered by the Members.
- 6.2 Should any Member 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 Board shall be entitled to suspend or terminate the Membership of such defaulting Member (as it may deem appropriate), as contemplated in the Code of Good Practice, provided that the Board shall also be entitled at its discretion to condone or compromise any such default and to reinstate the Membership of the Member concerned.
- 6.3 The termination or suspension of Membership for any reason, including resignation, shall not ipso facto release a Member from liability for payment of any arrear Member's Contributions which became due for payment prior to the date of such termination or suspension.

## **7 AMENDMENTS TO THE MOI**

- 7.1 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 *eiusdem generis*, spelling, punctuation, reference, grammar 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.
- 7.2 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.
- 7.3 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.

## **8 LIMITATION OF LIABILITY**

No Person shall, solely by reason of being a Founding Member, Member, Key Individual or Director, be liable for any liabilities or obligations of the Company.

## **9 THE MAKING OF RULES**

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

## **10 FINANCIAL YEAR**

The financial year of the Company shall commence on 1 April and terminate on 31 March in each year, as same may be changed from time to time by way of Special Resolution of the Voting Members.

## **11 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS**

- 11.1 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.
- 11.2 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.
- 11.3 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 Members are entitled to inspect and take copies of (being the MOI, amendments to the MOI, records in respect of Directors, Accounting Records required to be maintained by the Company, reports to annual General Meetings, annual Financial Statements, notices and minutes of General Meetings, communications generally to Members and the Members' Register), shall be open to inspection by Members.
- 11.4 Apart from the Industry Regulator, Board or Members, 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 of the Voting Members.
- 11.5 The Company shall notify the Members of the publication of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those annual Financial Statements. If a Member demands a copy of the annual Financial Statements, the Company shall make same available to such Member free of charge.

## **12 APPOINTMENT OF AUDITOR**

- 12.1 The Auditor shall initially be BDO Inc. The Auditor may be removed, and replaced, in accordance with the relevant provisions of the Companies Act.
- 12.2 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.

### 13 GENERAL MEETINGS AND ROUND ROBIN RESOLUTIONS

- 13.1 The Company shall convene an annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.
- 13.2 The Company shall, as determined by the Board, either -
  - 13.2.1 hold a General Meeting in order to consider one or more resolutions; or
  - 13.2.2 as regards such resolution/s that could be voted on at a General Meeting, other than an annual General Meeting, instead require them to be dealt with by Round Robin Resolution.
- 13.3 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 Members for decision.
- 13.4 Business may be transacted at any General Meeting only while a quorum is present.
- 13.5 The quorum to convene a General Meeting, and for a matter to be decided upon at the General Meeting, shall require that both:
  - 13.5.1 at least 5 (five) Voting Members be Present; and
  - 13.5.2 the Voting Members that are present between them in aggregate employ no less than 200 (two hundred) Practitioner Members.
- 13.6 If within 60 (sixty) minutes from the time appointed for the General Meeting to commence, a quorum is not present:
  - 13.6.1 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
  - 13.6.2 subject to paragraph 13.8, 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.
- 13.7 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 -
  - 13.7.1 held by all of the Voting Members who are present at the General Meeting at the time; and
  - 13.7.2 that are entitled to be exercise 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 Members) as agreed at the General Meeting.



- 13.8 No further notice is required to be Delivered by the Company of a General Meeting that is postponed or adjourned as contemplated in paragraphs 13.6 and 13.7 unless the location for the General Meeting is different from:
- 13.8.1 the location of the postponed or adjourned General Meeting; or
- 13.8.2 a location announced at the time of adjournment, in the case of an adjourned General Meeting.
- 13.9 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 Voting Members 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.
- 13.10 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 Voting Members 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 Members which is present) to be Chairperson of the General Meeting.
- 13.11 At any General Meeting a resolution put to the vote shall be decided on a show of hands.
- 13.12 Each Voting Member Present at the meeting shall have 1 (one) vote for each Practitioner Member employed by that Voting Member (as recorded in the Members' Register) (whether voting by show of hands or on a poll).
- 13.13 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.
- 13.14 Every resolution of Voting Members of the Company is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall 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 a 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 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.

## 14 SPECIAL RESOLUTIONS REQUIRED IN CERTAIN CIRCUMSTANCES

- 14.1 Notwithstanding anything to the contrary contained in this MOI, but subject however to paragraph 4, the Voting Members and the Board undertake to procure that the Company shall not engage in, agree to perform or undertake any action relating to any matter set-out in this paragraph 14.1, except with the prior approval of a Special Resolution of the Voting Members and the Board's powers are limited accordingly –
- 14.1.1 any increase in Member Contributions which exceeds the average Consumer Price Index for the preceding 12-month period as published by Statistics South Africa (or its successor-in-title);
  - 14.1.2 any change to this MOI;
  - 14.1.3 any change to the Accreditation Rules or the Code of Good Practice;
  - 14.1.4 any change in any class of Members' Rights;
  - 14.1.5 any change in the financial year end of the Company;
  - 14.1.6 the acquisition, establishment, purchase, donation or disposal by the Company of any investment, business or asset with a value in excess of R2 000 000. This amount shall increase annually by the average Consumer Price Index for the preceding 12-month period as published by Statistics South Africa (or its successor-in-title);
  - 14.1.7 the granting of loans to third parties, employees or granting of any credit to any Person;
  - 14.1.8 the furnishing by the Company of any guarantee, suretyship, letter of comfort, security or other similar undertaking for the obligations of any Person;
  - 14.1.9 the encumbering of any assets of the Company in any manner whatsoever;
  - 14.1.10 the purchase or lease of immovable property other than the headquarters of the Company;
  - 14.1.11 any change in the basis of accounting or accounting policies from those used during the immediately preceding Financial Year otherwise than in accordance with IFRS;
  - 14.1.12 any matters pertaining to the Company requiring a Special Resolution in terms of the Companies Act;
  - 14.1.13 the replacement of the Auditors;
  - 14.1.14 any decision or act which would constitute an act of insolvency in terms of the Insolvency Act 24 of 1936 if the Company were a natural person including, without limitation, the voluntary liquidation, de-registration or discontinuance of the business activities of the Company and the passing of a resolution approving the commencement of business rescue proceedings in respect of the Company;
  - 14.1.15 any transaction (including the payment of any amounts whether pursuant to a transaction or as a donation) of any nature whatsoever between the Company and any of the Members, Key Individuals, Directors or Connected Persons to the Directors (other than pursuant to the Company complying with or performing in terms of any obligations assumed by it from the Voluntary Association).

## 15 DIRECTORS AND CASUAL VACANCIES

- 15.1 The minimum number of Directors shall be 5 (five). 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 -
- 15.1.1 to preserve and secure the assets and enterprise of the Company, and to ensure the continuity of its business activities and functions; and/or
  - 15.1.2 to cause vacancies to be filled, and the number of Directors to be increased to the required minimum.
- 15.2 The following Persons (each a “Nominating Person”) shall be entitled to nominate directors to the Board as follows –
- 15.2.1 each Voting Member that employs more than 50 (fifty) Practitioner Members (“Single Electing Members”) shall be entitled to nominate and have appointed / elected one director to the Board and each such director shall be entitled to one vote at any meetings of the Board, provided that the Single Electing Members shall collectively be entitled to appoint up to a maximum of 5 (five) directors. Should there be more than 5 (five) such Single Electing Members, then the 5 (five) that employ the greatest number of Practitioner Members shall have the nomination and appointment right;
  - 15.2.2 the Voting Members (other than the Voting Members contemplated in 15.2.1 that have the right to nominate/appoint a director in terms of 15.2.1) that collectively employ more than 50 (fifty) Practitioner Members (“Collective Electing Members”) shall be entitled to collectively elect one director to the Board for each set of 50 (fifty) Practitioner Members collectively employed by them and each such director shall be entitled to one vote at any meetings of the Board, provided that the Collective Electing Members shall collectively be entitled to appoint up to a maximum of 5 (five) directors. Should more than 5 (five) such Collective Electing Members (individually or collectively) be entitled to appointment a director, then the 5 (five) Collective Electing Members (individually or collectively) that employ the greatest number of Practitioner Members shall have the nomination and appointment right;
  - 15.2.3 at the Board’s election -
    - 15.2.3.1 the CEO of the Company shall be entitled to be appointed to the Board and shall be entitled to one vote at any meetings of the Board;
    - 15.2.3.2 the Industry Regulator shall be entitled to nominate and have appointed / elected 2 directors to the Board and the three directors so appointed shall be entitled to exercise, as between them, two votes at any meetings of the Board; and
    - 15.2.3.3 the Banking Association of South Africa (or its successor-in-title) shall be entitled to nominate and have appointed / elected 1 director to the Board and that director shall be entitled to one vote at any meetings of the Board.

- 15.3 No Director shall be entitled to appoint any Person as an Alternate Director to himself/herself. Any Shareholder entitled to nominate a Director pursuant to paragraph 15.2 or 15.8.2 shall be entitled on written notice to the Company, to nominate an Alternate Director for each Director nominated by it and appointed to the Board in terms of paragraphs 15.4 and 15.6. Any right or obligation conferred upon or provision pertaining to a Director of the Company in terms of this MOI shall apply equally to any Person appointed as an Alternate Director to the Director.
- 15.4 In any election of Directors and Alternate Directors, the election is to be conducted as follows –
- 15.4.1 a series of votes of those Voting Members entitled to exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy nominated pursuant to the provisions of paragraphs 15.2, 15.3 or 15.8.2; and
- 15.4.2 in each vote to fill a vacancy –
- 15.4.2.1 each Voting Right entitled to be exercised may be exercised once; and
- 15.4.2.2 the vacancy is filled only if a Majority of the voting rights exercised support the candidate.
- 15.5 Each Voting Member irrevocably and unconditionally undertakes in favour of each Nominating Person to vote in favour of the appointment to the Board of any Director or Alternate Director nominated for appointment to the Board by such Nominating Person in terms of paragraphs 15.2, 15.3 or 15.8.2.
- 15.6 In accordance with section 60(3) of the Companies Act, an election of a Director or Alternate Director that could be conducted at a Members' Meeting may instead be conducted by a Written polling of all Members entitled to exercise Voting Rights in relation to the election of such Director or Alternate Director.
- 15.7 Subject to paragraph 15.10, each Voting Member irrevocably and unconditionally undertakes in favour of each Nominating Person who has nominated a Director or Alternate Director, as the case may be, for appointment in terms of paragraphs 15.2 or 15.3 to vote in favour of the appointment of such nominee to the Board.
- 15.8 Any Nominating Person shall be entitled on Written notice to the Company to -
- 15.8.1 require the removal of the Director nominated by such Nominating Person in terms of paragraph 15.2 (and thereafter appointed to the Board in terms of paragraphs 15.3 or 15.6); and
- 15.8.2 nominate another Person for appointment to the Board in terms of paragraphs 15.3 or 15.6 to replace any such Director who is so removed or who ceases for any other reason to be a Director of the Company.
- 15.9 Each Voting Member irrevocably and unconditionally undertakes in favour of each Nominating Person to vote in favour of the removal from the Board of any Director or Alternate Director nominated for appointment to the Board by such Nominating Person in terms of paragraphs 15.2, 15.3 or 15.8.2 and appointed to the Board in terms of paragraphs 15.3 or 15.6, if request for such removal is made in terms of paragraph 15.8.1 or in circumstances contemplated in paragraph 15.10.

- 15.10 No Person shall be elected as a Director or Alternate Director, if she/he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director. A Person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.
- 15.11 The 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.
- 15.12 Save as provided in this paragraph 15, 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.
- 15.13 The foregoing provisions shall in no way derogate from the power of the Board to appoint a Chief Executive Officer of the Company (in accordance with the provisions of paragraph 19.3 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.
- 15.14 The Board shall appoint 1 (one) or more persons to act as the authorised representative(s) of the Company at meetings of the Members, or board of directors or otherwise, as the case may be, of any company contemplated in paragraph 13.10 above.

## **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; or
- 16.1.9 if the Director, without special leave of absence from the Board, absents himself/herself from 3 (three) consecutive meetings of the Board, unless the Board determines otherwise.

## **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 Connected Person related to any such 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 as chief executive officer ("Chief Executive Officer") 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.
- 19.4 The Board may from time to time entrust to and confer upon a Chief Executive Officer 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 paragraph 19.4.
- 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 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.
- 19.8 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.
- 19.9 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.
- 19.10 A Director shall:
- 19.10.1 comply with all of his/her duties and responsibilities as director of the Company as contemplated in any Applicable Laws and this MOI;
- 19.10.2 act in (i) good faith towards the Company 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 by whom he/she may be employed or nominated;
- 19.10.3 be bound by, and adhere to, the provisions of any board charter approved in terms of paragraph 19.2.

## **20 COMMITTEES**

- 20.1 The Board shall procure that the Conduct Committee and Nominations Committee is constituted in accordance with the Governance Framework.
- 20.2 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.
- 20.3 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.
- 20.4 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.

- 20.5 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:
- 20.5.1 the Board shall determine the composition and membership of each Board Committee, and may review its own decisions with respect thereto;
  - 20.5.2 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;
  - 20.5.3 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;
  - 20.5.4 each member of a Board Committee shall be bound to the provisions of paragraph 19.10 (*mutatis mutandis*);
  - 20.5.5 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
  - 20.5.6 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) -
    - 20.5.6.1 a remuneration committee, whose primary focus shall be to assist and advise the Board on matters relating to the remuneration of the Board;
    - 20.5.6.2 an audit committee, whose primary focus shall be that of oversight and financial reporting; and
    - 20.5.6.3 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).

## **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 of the Board. In addition, the 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 dispatch 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 at least 2 (two) directors nominated by the Voting Members contemplated in paragraph 15.2.1 and 2 (two) other directors.
- 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 Directors present may choose one of their number to be Chairperson of the meeting.
- 22.8 Each Director shall have such number of votes as is set out in paragraph 15.2 above 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 shall not have a casting 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 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 CONFIDENTIALITY**

- 26.1 Any Confidential Information obtained by a Director by virtue of his/her office as such and/or by a Member or Key Individual, whether received in relation to or during meetings of the Board, meetings of the Board Committees or meetings of the Voting Members or otherwise, shall be treated as confidential and shall not be disclosed by such Director and/or Member and/or Key Individual, or used for any purpose other than to fulfil his/her/its obligations to the Company.
- 26.2 Each Director, Key Individual and Member 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 paragraph 26.
- 26.3 If a Director, Key Individual and/or Member 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 paragraph 26.
- 26.4 This duty of confidentiality remains even after a Director ceases to hold office or a Member or Key Individual ceases to be a Member or Key Individual, but ceases to apply to such information which becomes accessible to the public.

## **27 NOTICES**

- 27.1 The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to any Member or by sending them prepaid through the post or by transmitting them by Electronic Communication.
- 27.2 Any Member who/which has furnished an Electronic Address to the Company, by doing so:
- 27.2.1 authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him/her/it; and
- 27.2.2 confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.

- 27.3 Any notice required to be given by the Company to the Members and not expressly prohibiting the provisions of this paragraph from applying, shall be sufficiently given (subject to giving a notice of availability in accordance with paragraphs 27.1 and 27.2), 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.
- 27.4 Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with the Companies Act.
- 27.5 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with paragraph 1), the provisions of paragraph 1 shall also be applied.
- 27.6 As regards the signature of an Electronic Communication by a Member, 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 indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

## **28 WINDING UP**

Despite any provision in any law or agreement to the contrary, but subject to paragraph 4, upon the winding-up, deregistration or dissolution of the Company:

- 28.1 no past or present Member 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;
- 28.2 all accumulated economic interest (including the assets) of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to an approved public benefit organisation/s 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 determination, by the relevant court, but shall not be paid or distributed by way of dividend, bonus or otherwise to its Directors, if any.