

**MEMORANDUM OF INCORPORATION**

of

**THE PHOTOGRAPHIC SOCIETY OF SOUTH AFRICA NPC**

**REGISTRATION NUMBER: 1954/001845/08**

**REGISTRATION DATE: 20 JULY 1954**

**as required in terms of**

**THE COMPANIES ACT, NO 71 OF 2008**

**(AS AMENDED)**

## 1. INTERPRETATION

In this MOI, –

- 1.1. words that are defined in the Companies Act (which are contained in **Schedule 1** for easy reference) but not defined in this MOI will bear the same meaning in this as in the Companies Act. For ease of reading, such terms have been capitalised in this MOI;
- 1.2. unless the context otherwise requires –
  - 1.2.1. "**Article**" means each separately numbered paragraph of this MOI;
  - 1.2.2. "**Companies Act**" means the Companies Act No. 71 of 2008, as amended, or any legislation which replaces it;
  - 1.2.3. "**Company Secretary**" means the Company Secretary appointed as such who satisfies the requirements of section 86 of the Companies Act and who fulfils the duties and functions as contemplated in section 88 of the Companies Act, or this MOI or any other law applicable to Company Secretaries and shall not include a person who fulfils an administrative function as a secretary in the Society;
  - 1.2.4. "**Company**" means THE PHOTOGRAPHIC SOCIETY OF SOUTH AFRICA N.P.C. or by whatever other name it may be known from time to time, referred to herein as the "**Society**";
  - 1.2.5. "**Deliver**" means deliver in the manner in which the Society is entitled to give notice or deliver documents in accordance with Article 24 (*Notices*) and the Companies Act;
  - 1.2.6. "**Effective Date**" means the date on which the Companies Act came into operation, namely 1<sup>st</sup> May 2011;
  - 1.2.7. "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Society by the Member;
  - 1.2.8. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Schedule 2**) or as contemplated in Article 14.3 which shall apply not only to Directors and Alternate Directors but also to members of Board committees and Prescribed Officers;
  - 1.2.9. "**Member**" means a person who holds membership in, and specified rights in respect of, the Company, as contemplated in Item 4 of **Schedule 1** to the Companies Act;

- 1.2.10. **"MOI"** means this Memorandum of Incorporation;
  - 1.2.11. **"Regulations"** means regulations published pursuant to the Companies Act;
  - 1.2.12. **"Round Robin Resolution"** means a resolution passed, other than at a —
    - 1.2.12.1. Members' Meeting, which —
      - 1.2.12.1.1. was submitted for consideration to the Members entitled to exercise voting rights in relation to the resolution; and
      - 1.2.12.1.2. was voted on by the requisite percentage of the Members entitled to vote contemplated in Article 12.29 by signing a resolution in counterparts within 20 (twenty) Business Days after the resolution was submitted to them,  
  
and includes Written polling of Members entitled to vote regarding the election of Directors;
    - 1.2.12.2. meeting of Directors, in respect of which all the Directors who may at the time be present in South Africa being not less than a quorum of Directors, voted in favour by signing in Writing a resolution in counterparts, within 20 (twenty) Business Days after the resolution was submitted to them;
    - 1.2.12.3. Round Robin Resolutions shall be conducted, in relation to Members' Meetings, as contemplated in section 60 of the Companies Act, and in relation to Directors' Meetings, as contemplated in section 74 of the Companies Act;
  - 1.2.13. **"Relation"** shall have the same meaning as **Related and Inter-related persons** as contemplated in section 2 of the Companies Act;
  - 1.2.14. **"Writing"** includes Electronic Communication (Written shall have a corresponding meaning) but as regards any Member entitled to vote, only to the extent that such Member has notified the Society of an Electronic Address;
- 1.3. references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;

- 1.4. references to Members entitled to vote Present at a Meeting or acting in person shall include juristic persons represented by duly authorised representative or acting in the manner prescribed in the Companies Act;
- 1.5. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.6. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8. if any term is defined within the context of any particular Article in the MOI, the term so defined, unless it is clear from the Article in question that the term so defined has limited application to the relevant Article, 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. save during the period contemplated in item 4(4) of Schedule 5 of the Companies Act when this MOI shall prevail, if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 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;
- 1.11. Any reference in this MOI to "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- 1.12. Any Schedules attached to this MOI form part of this MOI.
- 1.13. The standard form of memorandum of incorporation for a Non- Profit Company with Members contained in Annexure 1 of the Regulations shall not apply to the Society.
- 1.14. This MOI is in a form unique to the Society, as contemplated in section 13(1)(a)(ii) of the Act.

- 1.15. Where any provision of this MOI provides that a document, record or statement, other than a notice contemplated in section 6 (10) of the Companies Act, may be published on the Society's website, a notice of availability of that document, record or statement, summarising its content and satisfying any prescribed requirements, in accordance with Regulation 6 of the Regulations, shall be delivered to each intended recipient of the document, record or statement, together with instructions for receiving the complete document, record or statement.

## 2. **CALCULATION OF BUSINESS DAYS**

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

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

## 3. **NON-PROFIT COMPANY**

The Society --

- 3.1. is a Non-Profit Company with voting members, incorporated for an objective that relates to one or more cultural or social activities, or communal or group interests, as required by Item 1(a) (i) and (ii) of Schedule 1 of the Companies Act;
- 3.2. is one, the income and property of which cannot be distributed to its Incorporators, Members, Directors, Officers or persons related to any of them, except to the extent permitted by Item 1(3) of Schedule 1 to the Companies Act.

## 4. **POWERS OF THE SOCIETY**

- 4.1. The specific powers or part of any powers of the Society which are excluded from the plenary powers set out in the Act are the power to distribute *in specie* or in kind any of its assets among its Members, Directors, Incorporators or persons appointing Directors, save in terms of Article 4.2.4;.
- 4.2. The specific powers or part of any specific powers of the Society which are qualified or modified are as follows :-
  - 4.2.1. The power to form and have an interest in other companies or associations is modified to read :-

“to form and to have an interest in any company or companies or associations having the same or similar objectives to the Society, for the purpose of acquiring the undertaking or all or any of the assets or liabilities of that company or companies or associations or for any other purpose which may seem, directly or indirectly, calculated to benefit the company, and to transfer to any such company or companies or associations the undertaking or all of the assets and liabilities of the company”;

4.2.2. The power to amalgamate with other companies is modified to read :-

“to amalgamate with other companies having the same or similar objectives to the Society’s”;

4.2.3. The power to take part in the management, supervision and control of other companies is modified to read :-

“to take part in any management, supervision and control of the business or operations of any other company or business having the same or similar objectives as the Society and to enter into partnerships having the same or similar objectives as the Society”;

4.2.4. The power to remunerate any person for services rendered is modified to read :

“to remunerate any person or persons in cash or otherwise for services rendered in its formation or in the development of its business, or in terms of Item 1(3) of Schedule 1 to the Act”;

4.2.5. The power to make donations is modified to read :-

“to make donations only to organisations having the same or similar objectives to that of the Society”;

4.2.6. The power to establish pension, medical aid and incentive schemes is to read:

“to establish a pension scheme and a medical aid scheme and any incentive scheme in respect of its employees”.

4.2.7. The general powers of the Society are limited, as set out in Items 1(3) and 1(4) of the First Schedule to the Act.

## 5. **AMENDMENTS TO THE MOI**

Save for correcting errors substantiated as such from objective evidence or which are self evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or

similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Society's web site.

## 6. THE MAKING OF RULES

The Board shall publish a copy of any Rules which it may make for the Society or which it may amend on its web site, subject to Article 1.15 above, unless —

- 6.1. the amendment is one to correct self evident errors (including, but without limitation *ejusdem generis*, spelling, punctuation, reference, grammar or similar defects) in which event the Board shall publish a copy of any such correction effected by the Board on the Society's web site;
- 6.2. in making any Rules in question, the Board determines that any other method of publication shall be used.

## 7. MAIN BUSINESS AND OBJECTS

- 7.1. The main business which the Society is to carry on shall be to promote, advance and protect the art and science of photography and to unite all persons interested therein.
- 7.2. The main objective of the Society is to promote, advance and protect the art and science of photography and to unite all persons interested therein.
- 7.3. The main objective of the Society is the same as its main business.

## 8. CONDITIONS

The special conditions which apply to the Society and the requirements additional to those prescribed in the Act for their alteration are --

- 8.1. the income and property of the Society whencesoever derived shall be applied solely towards the promotion of its main object and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever to the Members of the Society or to its holding company or subsidiary, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Society or to any Member thereof in return for any services actually rendered to the Society;
- 8.2. The Association shall be wound-up, deregistered or dissolved, subject to Item 1 (4) (a) and (b) of Schedule 1 to the Companies Act, subject further thereto that:

8.2.1. The Members, if any, or the Society's directors if there are no Members, shall by way of special resolutions at or immediately before the time of dissolution; or

8.2.2. Failing which the Court shall;

determine one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts to which the net assets of the Association shall be distributed.

8.3. Distributions referred to in Article 8.2 above shall only be made to non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts, with objectives similar to that of the Society, who have been exempt from income tax in terms of section 10 (1) (e) (i) (cc) of the Income Tax Act.

8.4. The Society is not permitted to distribute its funds to any person other than to a similar association of persons.

8.5. Funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act 97 Of 1990 and in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act 1 of 1985.

## 9 FINANCIAL YEAR

The financial year of the Society shall end on the 30<sup>th</sup> day of June of each and every consecutive year.

## 10 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

10.1 The Company does not elect, in terms of section 34 (2), to comply voluntary with the provisions of Chapter 3 of the Companies Act.

10.2 Notwithstanding the provisions of Article 10.1, the Association shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Association to satisfy its obligations in terms of –

10.2.1 The Act;

10.2.2 The Regulations;

10.2.3 any other law with respect to the preparation of financial statements to which the Association may be subject; and

10.2.4 this MOI;



- 10.3 The Society shall prepare its Financial Statements at least once every financial year and in accordance with the International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body
- 10.4 The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the regulations published under the Companies Act, the documents which its Members are entitled to inspect and take copies of (being the MOI, amendments to the MOI, any Rules, records in respect of Directors, Accounting Records required to be maintained by the Society, notices and minutes of Members Meetings, communications generally to its Members shall be open to inspection by its Members, not being Directors.
- 10.5 Apart from its Members and Directors, no other Person shall be entitled to inspect any of the documents of the Society unless expressly authorised by the Directors or by Ordinary Resolution.
- 10.6 The Society shall notify its Members of the availability of any annual Financial Statements of the Society, setting out the steps required to obtain a copy of those Financial Statements. If a Member or Director demands a copy of the annual Financial Statements, the Society shall make same available to such Member or Director, free of charge.

## **11 MEMBERSHIP, ENTRANCE FEES AND MEMBERSHIP SUBSCRIPTIONS AND VOTING RIGHTS OF MEMBERS**

- 11.1 The granting of membership of the Society shall be in the sole discretion of its Board of Directors who shall have the power to either accept or reject the application for membership.
- 11.2 Any natural or juristic person having contractual capacity may apply for membership of the Society, and for the purpose of registration and in general unless and until otherwise lawfully determined the number of members of the Society is to be taken as being unlimited..
- 11.3 All applications for membership shall be in writing, in the prescribed form, and be addressed to the Society and such applicant shall furnish the Society with any information or document which may be required, including, in the case of a corporation, a copy of its MOI and members' register.
- 11.4 There shall be 2 (TWO) classes of Members, which classes shall be as follows:
- 11.4.1 Members with voting rights; and

- 11.4.2 Members without voting rights.
- 11.5 The Board of Directors shall be entitled to admit Members into certain sub-categories of either voting or non-voting Members, as they may determine from time to time, which sub-categories shall be a determination of the Members' status in the Society and shall be by way of Title. The Board of Directors shall incorporate such sub-categories of classes of Members in the Rules of the Company.
- 11.6 The Board of Directors may from time to time prescribe the amount of any entrance fees and/or membership subscriptions payable by Members and the periods covered thereby, provided that no entrance fees or subscriptions shall be paid by Honorary Members, Honorary Fellows, Honorary Experts or Honorary Masters of the Society, after receipt of such Honorary Title. The Board of Directors' aforementioned discretion shall include the power to reduce entrance fees and/or subscriptions payable by Members who are pensioners or who fall within certain categories of persons, as determined from time to time.
- 11.7 Entrance fees and membership subscriptions may vary between the different sub-categories of Members.
- 11.8 Entrance fees and membership subscriptions, from whatever source, shall be added to the general funds of the Society.
- 11.9 Subscriptions shall become payable upon application for membership and thereafter annually in advance on the 1<sup>st</sup> day of July of each year, provided that any new application for membership received after 31<sup>st</sup> December in any year be liable for only half of the annual subscription.
- 11.10 Any Member who fails to pay his subscription within sixty (60) days from due date shall automatically become delinquent and shall be denied the privileges of the Society until such time as such subscription or assessment is paid in full. Any Member remaining delinquent for six months consecutively shall cease to be a Member of the Society, but may, with the approval of the Board of Directors or the Executive Committee, be restored to membership upon his making payment of all his arrear subscriptions or assessments. The Board of Directors or the Executive Committee may, however, extend this period if they are of opinion that the circumstances warrant such extension. Any Member who ceases to be a Member, for whichever reason, shall no longer have a right to any Honorary Titles which may have been, or may be, granted to such Member, by the Directors, from time to time.
- 11.11 Each Member with voting rights shall, subject to any restrictions imposed by the Board of Directors in respect of the different sub-categories of Members and subject to Article 11.10 above, have one vote on every resolution proposed, whether with a show of hands or by poll.

- 11.12 The Board of Directors may terminate, or suspend, the membership of any Member who acts in any way contrary to the interests of the Society, or acts in any way contrary to, or breaches any provision of, this MOI, the Company's Rules and/or the Companies Act.
- 11.13 In addition to Article 11.12 above, a Member shall cease to be a Member of the Society in the following circumstances:
- 11.13.1 If by notice in writing to the Society, the Member resigns as a Member;
  - 11.13.2 If the Member shall cease to be a Member by operation of Article 11.10 above;
  - 11.13.3 If the Member is expelled by the Board of Directors or Executive Committee in terms of this MOI;
  - 11.13.4 If the Members is suspended by the Board of Directors or Executive Committee in terms of this MOI, for the period of such suspension.
- 11.14 Any individual or juristic person who is admitted to membership of the Society in accordance with this MOI and the Rules of the Society, shall be a Member of the Society. The Society shall keep a register of Members which shall include, as a minimum –
- 11.14.1 The full names of each and every Member;
  - 11.14.2 The identity number, or registration number, of the Members as contemplated in Article 11.14.1 above;
  - 11.14.3 An email address, postal address, physical address and/or a telefax number, for purposes of delivering a notice, document or statement in terms of this MOI or the Companies Act.
- 11.15 The rights and privileges of every Member shall be personal to such Member, and shall not be transferable or transmissible, by his own act or by operation of law.

## **12 MEMBERS' MEETINGS, ROUND ROBIN RESOLUTIONS AND PROXIES**

- 12.1 The Society shall, as determined by the Board, either –
- 12.1.1 hold a Meeting of its Members in order to consider one or more resolutions; or
  - 12.1.2 as regards such resolution/s that could be voted on at a Members' Meeting, instead require them to be dealt with by Round Robin Resolution contemplated in Article 1.2.11,
- 12.2 The Society must, if a resolution is dealt with by Round Robin Resolution, within 10 (ten) Business Days after a Round Robin Resolution is adopted including conducting an election of Directors, deliver a statement describing the results of the vote, consent process, or

election to every Member or other person who was entitled to vote on or consent to the Round Robin Resolution.

- 12.3 A Society must hold a Members' Meeting or put the proposed resolution by way of a Round Robin Resolution –
- 12.3.1 at any time that the Board is required by the Companies Act or this MOI to refer a matter to Members entitled to vote for decision;
  - 12.3.2 whenever required to fill a vacancy on the Board.
- 12.4 Each resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Members' Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the foregoing.
- 12.5 The Society shall hold an annual meeting of Members, to be called the Annual General Meeting, not later than six months after the end of the financial year of the Society and not more than fifteen months shall lapse between the date of one Annual General Meeting and that of the next. Such Annual General Meeting shall be held at such time and at such place as the Board of Directors may from time to time determine. All Members of the Society may attend the Annual General Meeting, except those sub-categories as the Directors may from time to time determine who may only attend upon special invitation, and may take part in any discussions, but only Members entitled to vote shall exercise a vote at any such meeting.
- 12.6 An Annual General Meeting must, as a minimum, provide for the following business to be transacted:
- 12.6.1 Presentation and consideration of –
    - 12.6.1.1 the President's Report;
    - 12.6.1.2 the financial statements for the immediately preceding financial year;
    - 12.6.1.3 the report by the independent accounting official;
    - 12.6.1.4 the audit committee report, if applicable;
  - 12.6.2 the appointment of an independent accounting official, and an audit committee, if applicable, for the ensuing financial year;

- 12.6.3 any matter raised by the Members, with or without advance notice to the Society.
- 12.7 The Board of Directors may, in addition to an Annual General Meeting, whenever deemed fit, convene a Members' Meeting or put a proposed resolution by way of a Round Robin Resolution. A Members' Meeting must be convened, or the Board of Directors must submit the proposed resolution to the Members by way of a Round Robin Resolution, if one or more Written and signed demands for such a Members' Meeting or Round Robin Resolution is/are delivered to the Society, and —
- 12.7.1 each such demand describes the specific purpose for which the Members' Meeting is proposed; and
- 12.7.2 in aggregate, demands for substantially the same purpose are made and signed by Members holding at least 10 (TEN) % of the voting rights entitled to be exercised in relation to the matter to be considered.
- 12.8 Round Robin Resolutions will be passed if signed by Members entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members' Meeting.
- 12.9 Every Members' Meeting shall be held where the Board determines from time to time. The authority of the Society to conduct a Members' Meeting entirely by Electronic Communication, or to provide for participation in a Members' Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Members' Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Members' Meeting, as set out in Section 63(2) of the Companies Act, is not limited or restricted.
- 12.10 A Members' Meeting shall be called by at least twenty one (21) Business Days' notice Delivered by the Society (and for this purpose Article 24.3 shall not apply) to all Members entitled to vote or otherwise entitled to receive notice.
- 12.11 The Society may call a Members' Meeting with less notice than required by Article 12.10, but such a Members' Meeting may proceed only if every Member who is entitled to exercise voting rights in respect of any item on the meeting agenda —
- 12.11.1 is Present at the Members' Meeting; and
- 12.11.2 votes to waive the required minimum notice of the Members' Meeting.
- 12.12 A Member entitled to vote, who is Present at a Members' Meeting —
- 12.12.1 is regarded as having received or waived notice of the Members' Meeting;

- 12.12.2 has a right to —
- 12.12.2.1 allege a material defect in the form of notice for a particular item on the agenda for the Members' Meeting; and
  - 12.12.2.2 participate in the determination whether to waive the requirements for notice, if at least the required minimum notice was given, or to ratify a defective notice; and
- 12.12.3 except to the extent set out in Article 12.12.2 is regarded to have waived any right based on an actual or alleged material defect in the notice of the Members' Meeting.
- 12.13 A notice of a Members' Meeting must be in writing, in plain language and must include --
- 12.13.1 the date, time and place for the Meeting, and the Record Date for the Meeting;
  - 12.13.2 the general purpose of the Meeting, and any specific purpose contemplated in Article 12.7.1, if applicable;
  - 12.13.3 a copy of any proposed resolution of which the Society has received notice, and which is to be considered at the Meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
  - 12.13.4 a reasonably prominent statement —
    - 12.13.4.1 that a Member entitled to attend and vote at the Members' Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote, or give or withhold written consent on behalf of the Member entitled to vote to a decision by Round Robin Resolution;
    - 12.13.4.2 that a proxy need not be a Member;
    - 12.13.4.3 that participants in a Members' Meeting are required to furnish satisfactory identification in terms of Section 63(1) of the Companies Act in order to reasonably satisfy the Person presiding at the Members' Meeting;
    - 12.13.4.4 of the availability and/or possible use of Electronic Communication for participation in the Members' Meeting, and provide any necessary information to enable Members entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of

Electronic Communication is at the expense of the Member entitled to vote or proxy, except to the extent that the Society determines otherwise.

- 12.14 A Members' Meeting may proceed notwithstanding a material defect in the giving of the notice, subject to Article 12.15, only if every Member who is entitled to exercise voting rights in respect of each item on the agenda of the Members' Meeting is present at the Members' Meeting and votes to approve the ratification of the defective notice.
- 12.15 If a material defect in the form or manner of giving notice of a Members' Meeting relates only to one or more particular matters on the agenda for the Members' Meeting --
- 12.15.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
- 12.15.2 the Members' Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 12.16 An immaterial defect in the form or manner of Delivering notice of a Members' Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Member to whom it was addressed if the Society elects to do so, does not invalidate any action taken at the Members' Meeting.
- 12.17 Business may be transacted at any Members' Meeting only while a quorum is present.
- 12.18 A Members' Meeting may not begin, or a matter to be decided upon may not begin to be considered, unless a quorum of sufficient Members are present at the Members' Meeting to exercise, in aggregate, at least 2% (two per cent) of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the Members' Meeting, but if the Society has more than 2 (two) Members entitled to vote, the Members' Meeting may not begin unless in addition at least 3 (three) Members entitled to vote are Present;
- 12.19 If within 1 (one) hour from the time appointed for the Members' Meeting to commence, a quorum is not present, the Members' Meeting shall be postponed, without motion, vote or further notice, subject to Article 12.22, for 1 (one) week to the same day in the next week or, if that day be a non-business day, to the next succeeding day which is a business day, and if at such adjourned Members' Meeting a quorum is not present within 1 (one) hour from the time appointed for the Members' Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.
- 12.20 A Members' Meeting, or the consideration of any matter being debated at the Members' Meeting, may be adjourned from time to time without further notice on a motion supported by Members entitled to exercise, in aggregate, a majority of the voting rights --

- 12.20.1 held by all of the Members who are present at the Members' Meeting at the time; and
- 12.20.2 that are entitled to be exercised on at least one matter remaining on the agenda of the Members' Meeting, or on the matter under debate, as the case may be.

Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Members) as agreed at the Members' Meeting.

- 12.21 A Members' Meeting may not be adjourned beyond the earlier of —
  - 12.21.1 the date that is 120 (one hundred and twenty) Business Days after the Record Date; or
  - 12.21.2 the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.
- 12.22 No further notice is required to be Delivered by the Society of a Members' Meeting that is postponed or adjourned as contemplated in Article 12.19, unless the location for the Members' Meeting is different from —
  - 12.22.1 the location of the postponed or adjourned Members' Meeting; or
  - 12.22.2 a location announced at the time of adjournment, in the case of an adjourned Members' Meeting.
- 12.23 After a quorum has been established for a Members' Meeting, or for a matter to be considered at a Members' Meeting, the Members' Meeting may continue, or the matter may be considered, so long as at least 1 (one) Person with voting rights entitled to be exercised at the Members' Meeting, or on that matter, is Present at the Members' Meeting.
- 12.24 The President of the Board shall preside as Chairperson at every Members' Meeting. If there is no such President, or if at any Members' Meeting she or he is not present within 15 (fifteen) minutes after the time appointed for holding the Members' Meeting or is unwilling to act as Chairperson, the Members entitled to vote which are Present shall select a Director present at the Members' Meeting, or if no Director be present at the Members' Meeting, or if all the Directors present decline to take the chair, the Members entitled to vote shall select one of their number which is Present to be Chairperson of the Members' Meeting.
- 12.25 At any Members' Meeting a resolution put to the vote shall be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll shall be demanded by —



12.25.1 not less than 5 (five) Members having the right to vote on that matter; or

12.25.2 a Member or Members entitled to exercise not less than 1/10<sup>th</sup> (one tenth) of the total voting rights entitled to vote on that matter,

and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Society, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Members' Meeting or adjourned Members' Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Members' Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Members' Meeting, whose decision shall be final and conclusive.

12.26 If a poll is duly demanded it shall be taken in such manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the Members' Meeting at which the poll was demanded. Scrutineers may be appointed by the Chairperson to declare the result of the poll, and if appointed their decision, which shall be given by the Chairperson of the Members' Meeting, shall be deemed to be the resolution of the Members' Meeting at which the poll is demanded.

12.27 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the Members' Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

12.28 A poll referred to in Article 12.25 shall be taken forthwith. The demand for a poll shall not prevent the continuation of a Members' Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.

12.29 Every resolution of Members is either an Ordinary Resolution or a Special Resolution. An Ordinary Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 50% (fifty per cent) of the voting rights exercised on the resolution. A Special Resolution, save to the extent expressly provided in respect of a particular matter contemplated in this MOI, shall require to be adopted with the support of more than 75% (seventy five per cent) of the voting rights exercised on the resolution.

12.30 On a show of hands, a Person entitled to vote Present at the Meeting shall have only 1 (one) vote. Every Person entitled to vote who is Present at the Meeting in person or by proxy shall have 1 (one) vote.

- 12.31 In the case of joint Members, each Member shall be entitled to exercise his or her own vote exclusively, separate from that of his or her joint Member/s.
- 12.32 No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Society. The appointment is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.
- 12.33 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Society at least 24 (twenty four) hours prior to the Members' Meeting, before the proxy exercises any rights of the Member entitled to vote at a Members' Meeting.
- 12.34 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Securities in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Society at its Registered Office before the commencement of the Members' Meeting or adjourned Members' Meeting at which the proxy is used.
- 12.35 Subject to the provisions of the Companies Act, a form appointing a proxy shall as nearly as circumstances permit, be in the form, or to the effect, as follows:

**THE PHOTOGRAPHIC SOCIETY OF SOUTH AFRICA NPC**

I, \_\_\_\_\_, of \_\_\_\_\_, being a member of the above Society and entitled to \_\_\_\_\_ vote/s, do hereby appoint \_\_\_\_\_ of \_\_\_\_\_, or failing him \_\_\_\_\_, as my proxy to vote for me and on my behalf for/against the resolution/s to be submitted at the Members' Meeting of the Society, to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Signed by me at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

- 12.36 If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as she/he/it sees fit.

- 12.37 No Member shall be entitled to be present or to vote on any question, either personally or by proxy, at any Members' Meeting, or by way of Round Robin Resolution, or to be reckoned for a quorum, while any sum presently payable by him to the Society in respect of any fee or subscription, remains unpaid.

### 13 REGIONS

- 13.1 The Board of Directors may, in their discretion, divide the Members into specific Regions, based on geographical area, to be determined from time to time as the need arises, which Regions shall be determined, *inter alia*, for ease of administration of the Society's affairs.
- 13.2 Each Region shall elect its own Director during an election for Regional Directors, who shall be responsible for, *inter alia*, the Region's proper administration.
- 13.3 The Board of Directors shall incorporate the Regions, as determined from time to time, into the Rules of the Society.

### 14 DIRECTORS, ELECTION OF DIRECTORS AND CASUAL VACANCIES

- 14.1 The number of Directors shall be a minimum of 7 and a maximum of 21. Any failure by the Society 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 Society.
- 14.2 Each of the Directors, except a Director contemplated in Article 14.8, shall be elected in accordance with Article 14.5, to serve as a Director either Regionally or Nationally, for a period of two years, calculated as contemplated in Article 14.11 below. All Directors shall have equal powers and no differentiation shall be made between Regional and National Directors, apart from their specific functions, as contemplated in this MOI, the Rules of the Society or determined by the Board from time to time.
- 14.3 No Person may serve as a Director unless he or she is also a Member of the Society, other than such classes of membership as the Directors may from time to time determine. Apart from the aforementioned, there are no general qualifications prescribed by the Society for a Person to serve as a Director in addition to the requirements of the Companies Act.
- 14.4 No Director shall be entitled to appoint any Person as an Alternate Director to himself/herself.
- 14.5 In any election of Directors, the election is to be conducted in accordance with the following procedure, to be called the Electoral Procedure –
- 14.5.1 During each Congress Board Meeting, an Electoral Officer will be appointed for all elections during the ensuing year, to control the electoral process. This person must be independent of the Board and should have no aspiration to serve on the Board.

- 14.5.2 In the event that the person elected as the Electoral Officer is related to any nominated person in the ensuing year, the Electoral Officer shall step down and the Board of Directors shall nominate and appoint another person who satisfies the requirements of Article 14.5.1 above.
- 14.5.3 The Board of Directors will, in consultation with the Electoral Officer, appoint 2 (two) adjudicators, which adjudicators should have no aspiration to serve on the Board and with no Relation to any of the nominated Members.
- 14.5.4 The Electoral process for election of Regional and National Directors will be the same, except that:
- 14.5.4.1 Regional and National Directors will be elected in alternate years, National Directors to be elected in even years, and Regional Directors to be elected in uneven years;
  - 14.5.4.2 All Members of the Society can vote for National Directors;
  - 14.5.4.3 Only Members of the Society in a specific region can vote for a Director in that region.
- 14.5.5 The Company Secretary shall deliver a notice calling for nominations of Directors, upon:
- 14.5.5.1 all Members, who are fully paid up, in respect of nominations for National Directors; and
  - 14.5.5.2 all Members in a specific region, who are fully paid up, in respect of nominations for Regional Directors of that Region.
- 14.5.6 The notice contemplated in Article 14.5.5 above, shall inform the respective members –
- 14.5.6.1 The Society has published the Rules and procedure for elections on the Society's web-site;
  - 14.5.6.2 Which Directors, presently serving at that time, have made themselves available for re-election;
  - 14.5.6.3 The number of vacancies and nomination required;
  - 14.5.6.4 Of the deadline for submissions of Nominations.

- 14.5.7 In addition to the notice contemplated in Article 14.5.5 above, the Society shall publish an announcement in respect of the proposed elections and nominations, on the Society's web-site, as well as in Image and the Society's Newsletter.
- 14.5.8 The Members concerned shall forward their nominations to the Company Secretary, at such address, electronic or otherwise, or through such mechanisms as the Board of Directors from time to time may determine and implement.
- 14.5.9 In the event that only one person is nominated the need for election shall be negated.
- 14.5.10 All nominated Members shall forward their *Curriculum Vitae* to the Company Secretary who shall then publish same on the Society's web-site.
- 14.5.11 Voting shall be done by way of a Round Robin Resolution, as contemplated in Article 1.2.11, as follows:
- 14.5.11.1 The Company Secretary shall prepare ballot papers which shall be approved by the Electoral Officer;
- 14.5.11.2 The ballot paper shall make provision for the inclusion, by a voting Member, of his or her membership number in the Society on the document itself;
- 14.5.11.3 The ballot papers shall be published on the Society's web-site and notice of availability of the ballot papers shall be delivered to all the Members, or Regional Members only (if an election of Regional Directors is conducted), via e-mail by no later than the 15<sup>th</sup> of July of the year in which the elections are held. The Company Secretary may forward the ballot papers to a Member or Members directly only if an express written request thereto has been received;
- 14.5.11.4 The Members shall reply on the ballot paper, within 20 (twenty) Business days from date of delivery of the notice of availability, and forward such ballot paper to the Electoral Officer, who shall be provided with a list of Members;
- 14.5.11.5 In the event of an equality of votes in respect of two or more Directors, a second electoral procedure shall take place with only the names of such Directors who received an equality of votes;

- 14.5.11.6 After the period of 20 (twenty) Business days, as contemplated in Article 14.5.11.4 above, the Electoral Officer shall have the results confirmed by the two adjudicators, after which he or she shall present the results to the President.
- 14.5.11.7 Within 10 (ten) Business days after conducting the election of Directors, the Society shall deliver a statement, firstly to the Directors, and secondly to the Members who were entitled to vote in the election, and describe in such statement the results of the vote;
- 14.5.11.8 The delivery of the statement as contemplated in Article 14.5.11.7 above, shall take place at least three weeks prior to the Annual General Meeting of the Society.
- 14.6 No person shall be elected as a Director, if she or 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 nor act as a Director. A person placed under probation by a court must not serve as a Director unless the order of court so permits.
- 14.7 No election of a Director shall take effect until he or she has delivered to the Society a Written consent to serve.
- 14.8 Any casual vacancy occurring on the National Board of Directors, may be filled by the Board, but the individual so appointed shall cease to hold office at the termination of the first Members' Meeting to be held after the appointment of such Individual as a Director unless she/he is elected at such Members' Meeting or by Round Robin Resolution. Should a casual vacancy occur in a Regional Director position, the Board may delegate their power to fill the position to a committee of Members from the specific Region, but the individual so appointed shall cease to hold office at the termination of the first Members' Meeting for that region to be held after the appointment of such Individual as a Director unless she/he is elected at such Members' Meeting or by Round Robin Resolution.
- 14.9 The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the minimum number fixed by or pursuant to this MOI, the continuing Directors or Director may act only for the purpose of summoning a Members' Meeting.
- 14.10 If there is no Director able and willing to act, then any Member entitled to exercise voting rights in the election of a Director may convene a Members' Meeting for the purpose of appointing Directors.
- 14.11 The Directors shall serve for a period of about two (2) years, which period shall commence on the first calendar day of the ensuing month following the Annual General Meeting at which

his or her election was confirmed and which shall terminate in his or her second year of service on the last calendar day of the month during which the Annual General Meeting for that year is held.

- 14.12 The above period will not necessarily be an exact two (2) year period and may be more or less, depending on the dates upon which the respective Annual General Meetings are held.

## **15 CESSATION OF OFFICE AS DIRECTOR**

15.1 A Director shall cease to hold office as such –

- 15.1.1 immediately if she or he becomes Ineligible or Disqualified or the Board resolves to remove her or him 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 she or he shall be suspended);
- 15.1.2 when her or his term of office contemplated in Articles 14.2, 14.11 and 15.2 expires;
- 15.1.3 when she or he dies;
- 15.1.4 when she or he resigns by Written notice to the Society;
- 15.1.5 if there are more than 3 (three) Directors in office and if the Board determines that she or he has become incapacitated to the extent that the Director is unable to perform his or her functions as such, and is unlikely to regain that capacity within a reasonable time, and 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 she or he shall be suspended);
- 15.1.6 if she or he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the Society;
- 15.1.7 if she or he is removed by Ordinary Resolution of the Members;
- 15.1.8 if there are more than 3 (three) Directors in office and if she or he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and 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 she/he shall be suspended);

- 15.1.9 if she or he files a petition for the surrender of her or his estate or an application for an administration order, or if she or he commits an act of insolvency as defined in the insolvency law for the time being in force, or if she or he makes any arrangement or composition with her or his creditors generally;
- 15.1.10 If he or she ceases to be a Member of the Society;
- 15.1.11 If she or he becomes of unsound mind;
- 15.1.12 if she or he is otherwise removed in accordance with any provisions of this MOI.

15.2 The election of National and Regional Directors shall be conducted in such a manner as to ensure that at least one-third of the elected Directors shall retire each year who shall be replaced during elections. Such retiring Directors shall be eligible for re-election.

## **16 REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF BOARD COMMITTEES**

- 16.1 The Directors or Members of Board committees shall not be entitled to remuneration for their services, as such, rendered to, or at the direction of, the Society.
- 16.2 Notwithstanding the aforementioned, the Directors shall be entitled to reasonable payment of, or reimbursement for, expenses incurred to advance a stated objective of the Society, which will include attending meetings of the Society or attending to the business of the Society.
- 16.3 Notwithstanding Article 16.1 above, a Director may be employed by or hold office of profit under the Society in conjunction to his or her office as Director, other than that of an independent accounting professional, and on such terms as to remuneration and otherwise as a disinterested quorum of Directors may determine.

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

The Society shall not provide any form of financial assistance to Directors and Prescribed Officers and their related and inter-related parties.

## **18 GENERAL POWERS AND DUTIES OF DIRECTORS**

- 18.1 The Directors shall, apart from their general duties and powers as contemplated in the Companies Act, have the following powers -
  - 18.1.1 To consider applications for membership or applications for any sub-category of membership and to admit and or reject any such application, to confer, *inter alia*, honorary memberships, honorary fellowships, fellowships and associate membership, or any other sub-category of membership as prescribed by the



- Rules of the Society, upon any Member of the Society, in accordance with such Rules of the Society;
- 18.1.2 To draw up a code of ethics to be observed and be binding on all Members of the Society and to define what shall constitute misconduct on the part of Members of the Society;
- 18.1.3 To suspend any Member from membership of the Society pending enquiry into conduct deemed to be unworthy, dishonest, or unbecoming of a Member, or in breach of the Rules of the Society, this MOI or the Companies Act and –
- 18.1.3.1 To cause such Member to appear before them for examination in regard to such conduct;
- 18.1.3.2 to call and examine witnesses in regard to any complaints by them as to the conduct of Members;
- 18.1.3.3 to suspend such Member for such period as they deem fit; or
- 18.1.3.4 to remove such Member's name of the Society's register of Members; and
- if on due enquiry, and after full opportunity given to such Member to appear before the Board of Directors in defence of such charges, the Board of Directors should be of opinion that such Member should be so suspended or struck from the Members' Register;
- 18.1.4 To take necessary steps and do all things needful for the promotion of legislation in the interest of photography or cinematography;
- 18.1.5 To purchase or otherwise acquire for the Society any assets, rights or privileges which the Society is authorised to acquire at such a price and generally on such terms as the Board of Directors may deem fit;
- 18.1.6 To appoint and in their discretion to dismiss, remove or suspend any employees and servants as they may deem necessary for the conduct of the Society's business, and to determine their duties and fix their remuneration;
- 18.1.7 To borrow or raise money for the purpose of the Society and secure the repayment thereof on such terms and in such manner as they think fit, with power to mortgage or pledge any of the Society's assets;
- 18.1.8 To institute, conduct, defend, abandon or compound any legal proceedings by or against the Society and to pay the costs thereof;

- 18.1.9 To submit, if applicable and/or possible, any dispute or matter in which the Society is interested, to arbitration;
  - 18.1.10 To act as Arbitrators in connection with any dispute or matter in which the Society or its Members are concerned;
  - 18.1.11 To delegate authority to any officer, employee or Member of the Society to sign any papers or documents that may be necessary for the conduct of the Society's business; and
  - 18.1.12 To co-opt any person or persons, including a person or persons from the legal and/or financial professions, onto the Board as they deem necessary.
- 18.2 The Director's shall, from their number, elect a Director to the position of Financial Director, which Financial Director shall act as the Secretary and/or Treasurer and/or Public Officer of the Society and who shall at all relevant times be resident in the Pretoria/Witwatersrand/Vereeniging area unless otherwise decided upon by at least three-quarters of Directors.
- 18.3 Any reference in this MOI to the Secretary and/or Treasurer and/or Public Officer of the Society, shall be a reference to such Financial Director.
- 18.4 The position of Financial Director shall be permanent, and no elections for this position shall occur save in the event that the Financial Director ceases to be a Director in accordance with this MOI, the Companies Act, or any other reason.
- 18.5 The Board of Directors shall establish an Executive Committee and in each year appoint the Chairperson of the Executive Committee and at least 2 (two) other persons, who shall be designated as the Executive Committee. Only Directors of the Society may be appointed as members of the Executive Committee.
- 18.6 The Chairperson of the Executive Committee may co-opt any other persons as are needed.
- 18.7 The following powers shall be delegated to the Executive Committee:
- 18.7.1 To attend to the day to day affairs and running of the Society including the approval and payment of expenses incurred in the ordinary course of the affairs of the Society.
  - 18.7.2 The acceptance and conferring of the following classes of membership: Organizational members, Trade and Industrial Members, Life Members, Ordinary Members, Joint Members and Subscriber Members.

- 18.7.3 To suspend any member from membership of the Society pending enquiry into conduct deemed to be unworthy, dishonest, or unbecoming of a member, or in breach of this MOI, the Rules of the Society or the Companies Act; to cause such member to appear before it for examination in regard to such conduct, to call and examine witnesses in regard to any complaints received by it as to the conduct of members; to suspend such member for such period as it may think fit or to strike such member's name off the Society's Register of Membership if, on due enquiry and after full opportunity given to such member to appear before the Executive Committee in defence of such charges, it should be of opinion that such member should be so suspended or shall no longer be a member of the Society.
- 18.7.4 To appoint and in its discretion to dismiss, remove or suspend any employees and servants as it may deem necessary for the conduct of the Society' business, and to determine their duties and fix their remuneration.
- 18.7.5 To institute, conduct, defend, abandon or compound any legal proceedings by or against the Society and to pay the costs thereof.
- 18.7.6 To fill any vacancy which may occur in the Chairmanship or ordinary membership of any of the Committees appointed by the Board of Directors.
- 18.7.7 To perform all such other functions as the Board of Directors may from time to time decide to delegate to the Executive Committee.
- 18.8 All matters decided upon by the Executive Committee shall be minuted and these minutes shall be circulated to all members of the Board of Directors within 14 (fourteen) days of such decision whereupon any member of the Board of Directors objecting to any action so taken by the Executive Committee shall be entitled to deliver, within 14 days of the posting of such minutes, notice to the Secretary of his objection and, if necessary, demand the convening of a special meeting of the Board of Directors to reconsider the decision so taken. If, no such objection and request for the convening of a special meeting of the Board of Directors is lodged with the secretary in the prescribed time the decisions taken by the Executive Committee shall become final and binding.
- 18.9 The President, Vice-Presidents and Directors are entitled to attend any meeting of the Executive Committee personally or by proxy and to exercise the vote at such meetings.
- 18.10 The Chairman and members appointed in terms of Article 18 (5) shall be resident in the Pretoria/Witwatersrand/Vereeniging area, unless otherwise decided upon by at least  $\frac{3}{4}$  of the Directors, and any meetings of the Executive Committee is preferred to be held in the Pretoria/Witwatersrand/Vereeniging area.

**19 BOARD COMMITTEES**

- 19.1 The Directors may appoint any number of Board committees and delegate to such committees any authority of the Board. The members of such committees may include persons who are not Directors as long as they are not Ineligible or Disqualified to be Directors who shall not be able to vote.
- 19.2 No person shall be appointed as a member of a Board committee, if she or he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
- 19.3 There are no general qualifications prescribed by the Society for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.
- 19.4 A Member of a Board committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.
- 19.5 Committees of the Board may consult with or receive advice from any person.
- 19.6 Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) Member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

**20 THE PRESIDENTIAL TEAM AND THE ELECTORAL PROCEDURE FOR THE PRESIDENTIAL TEAM**

- 20.1 On receipt of the results of the election of Directors, the current President will call for ratification and nomination, by the Directors who will hold office as from the first calendar day of the ensuing month following the Annual General Meeting, of Directors to the presidential team, which presidential team shall consist of a President, a First Vice President and a Second Vice President.
- 20.2 The President shall serve as such for a 2 (two) year term, and shall be elected in odd-numbered years.
- 20.3 After the 2 (two) year period as contemplated in Article 20.2 above, the First Vice President shall automatically be appointed as President, unless –
- 20.3.1 He or she has not performed to the satisfaction of the Board; or

- 20.3.2 He or she has acted in any way contrary to this MOI, the Rules of the Society or the Companies Act, or acted in any way which has brought the Society into disrepute.
- 20.4 Upon his or her retirement, the President will merely call, subject to Article 20.3 above, for confirmation that the First Vice President shall be appointed as the President.
- 20.5 If a Director, who is a Regional Director, is appointed as President, then such Director shall immediately become a National Director, whereafter his position as Regional Director shall become vacant. The region in which such a Director was elected, shall, as soon as is practical, hold an interim election to fill the vacant position.
- 20.6 The First Vice President shall serve as such for a period of 2 (two) years, and shall be elected in odd-numbered years.
- 20.7 The Second Vice President shall serve as such for a period of 1 (one) year, provided that if such Second Vice President has performed to the satisfaction of the Board of Directors, he or she shall be elected for a second year.
- 20.8 In each year in which the President is retiring, the positions of First and Second Vice Presidents shall be open for nominations, and in each year in which the President is not retiring, the position of Second Vice President only, shall be open for nomination, subject to Article 20.7 above.
- 20.9 In respect of the nomination in respect of this Article 20, the Directors shall from time to time adopt procedures relating to the nomination and election of the Presidential team. –
- 20.10 The Electoral Officer may, if he deems it desirable, have the votes, in consequence of an nominations and electoral procedures adopted in accordance with Article 20.9 above, confirmed by 2 (two) adjudicators, whereafter the Electoral Officer shall present the results to the President;
- 20.11 In the event of a tie between two or more Directors, the President shall have a casting vote;
- 20.12 The President shall thereafter –
- 20.12.1 make the results known to the Directors at the Board meeting at the National Congress; and
- 20.12.2 Announce the Results at the Honours and Awards Banquet
- 20.13 The President, or during the years in which the President shall retire the outgoing President, shall announce the new Board of Directors, by way of a letter delivered via e-mail, to the Members.

- 20.14 A President who has already served two consecutive terms in that capacity shall not be eligible for re-election to the same office until a period of 2 (two) years has elapsed, unless his election is approved by no less than three-quarters of the Directors, provided that in the event of a ballot being necessary, any Director who has not returned his voting paper to the Company Secretary within 14 (fourteen) days after the date on which it was delivered to him or her, shall be deemed to have waived his or her right to vote on the proposal and he or she shall not be taken into account in reckoning the proportion of votes for or against the proposal.
- 20.15 The immediate past President of the Society shall, if applicable, be, *ex officio*, a Member of the Board of Directors until the last calendar day of the month in which the Annual General Meeting is held in the year following that during which he retired from the office of President.
- 20.16 The Board of Directors may fill any casual vacancy occurring in the office of President or Vice-Presidents and any person appointed shall hold office as aforesaid. The procedure to be followed for the election of the new President and Vice-Presidents and the exact date on which they shall take office shall annually be determined by the Executive Committee. This date shall not be later than the last calendar day of the month in which the Annual General Meeting is held and whenever possible be on the same day as the annual Honours and Awards Banquet. Voting powers for the appointment of the President and Vice-Presidents shall be granted and restricted to the Directors who will hold office as from the first calendar day of the ensuing month following the Annual General Meeting.

## 21 PROCEEDINGS OF DIRECTORS' MEETINGS

- 21.1 A Director authorised by the Board -
- 21.1.1 may, at any time, summon a meeting of the Directors; and
  - 21.1.2 must call a meeting of the Directors if required to do so by at least 2 (two) Directors.
- 21.2 The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of Directors to all Directors even those for the time being absent from South Africa.
- 21.3 If all of the Directors --
- 21.3.1 acknowledge actual receipt of the notice;
  - 21.3.2 are present at a meeting of the Directors; or
  - 21.3.3 waive notice of the meeting,

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

- 21.4 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 21.5 The location of Directors' meetings shall be determined by the Board from time to time. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 21.6 The quorum for a Directors' meeting shall be 35 (thirty five) % of the Directors in office.
- 21.7 The President of the Society shall be the Chairperson of meetings of Director, but in the absence of the President, the Directors shall elect one of the Vice Presidents to act as Chairperson of the meeting in the absence of the President. Should there be only one Vice President present at the meeting, then he or she shall be Chairperson of the meeting. In the event that neither the President, nor any of the 2 (two) Vice Presidents, are present, the Directors shall elect one of their own, present, to act as Chairperson of the meeting.
- 21.8 Each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on a resolution is sufficient to approve that resolution.
- 21.9 In the case of a tied vote the Chairperson may not cast a deciding vote even if the chairperson did initially have or cast a vote, alternatively the matter being voted on fails.
- 21.10 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 21.11 A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director in South Africa has received notice of the matter to be decided upon.

## 22 **PRESCRIBED OFFICERS**

- 22.1 No Person shall hold office as a Prescribed Officer, if she or he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him 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 her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

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

## 23 LOSS OF DOCUMENTS

The Society shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *ejusdem generis*) other document sent through the post either to the registered address of any Holder or to any other address requested by the Holder.

## 24 NOTICES

- 24.1 The Society may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Members or by sending them prepaid through the post or by transmitting them by telegram, telex, fax or e-mail.
- 24.2 Any Member who/which has furnished an Electronic Address to the Society, by doing so —
- 24.2.1 authorises the Society to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to her/him/it; and
- 24.2.2 confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
- 24.3 Any notice required to be given by the Society to the Members, and not expressly prohibiting the provisions of this Article from applying, shall be sufficiently given (subject to giving a notice of availability in accordance with Articles 24.1 or 24.2, if given by posting it on the Society's web site until at least the date when the event to which the notice refers occurs.
- 24.4 Any notice, document, record or statement or notice of availability of the foregoing sent by the Society shall be deemed to have been delivered on the date and time determined in accordance with **Schedule 3**.
- 24.5 A Member shall be bound by every notice Delivered to the person who was, at the date on which that notice was Delivered or established to the satisfaction of the Directors (as the case may be), as the Member, notwithstanding that the Member may then have been dead or may subsequently have died or have been or become otherwise incapable of acting as a Member.
- 24.6 The Society 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 Society 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 Article 2 (*Calculation of Business Days*)), the provisions of Article 2 (*Calculation of Business Days*) shall also be applied.

- 24.7 As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

## Schedule 1 – Definitions in the Companies Act

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

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

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

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

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

"**Banks Act**" means the Banks Act, 1990 (Act No. 1194 of 1990);

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

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

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

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

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

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

"**Competition Act**", means the Competition Act, 1998 (Act No. 89 of 1998);

"**convertible**" when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including—

- (a) any non-voting securities issued by the company and which will become voting securities—
  - (i) on the happening of a designated event; or
  - (ii) if the holder of those securities so elects at some time after acquiring them; and
- (b) Options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

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

**"creditor"** means a person to whom a company is or may become obligated in terms of any liability or other obligation that would be required to be considered by the company if it were applying the solvency and liquidity test set out in section 4;

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

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

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

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

**"employee share scheme"** has the meaning set out in section 95(1)(c);

**"exchange"** when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

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

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

**"external company"** means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);

**"financial statement"** includes—

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

**"group of companies"** means a holding company and all of its subsidiaries;

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

**"incorporator"**, when used—

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

**"individual"** means a natural person;

**"inter-related"**, when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated

in Section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series;

**"juristic person"** includes—

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

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

- (a) had actual knowledge of the matter; or
- (b) was in a position in which the person reasonably ought to have —
  - (i) had actual knowledge;
  - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
  - (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

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

**"ordinary resolution"** means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in Section 65(8) at a members' meeting.

**"person"** includes a juristic person;

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

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

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

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

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

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

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

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

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

**"special resolution"** means —

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

**"subsidiary"** has the meaning determined in accordance with Section 3;

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

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

1. A person is ineligible to be a Director if the Person —
  - 1.1. is a juristic person;
  - 1.2. is an unemancipated minor, or is under a similar legal disability; or
  - 1.3. does not satisfy any qualification set out in the MOI.
  
2. A person is disqualified to be a Director if —
  - 2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of Section 162, or in terms of Section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
  - 2.2. the Person —
    - 2.2.1. is an unrehabilitated insolvent;
    - 2.2.2. is prohibited in terms of any public regulation to be a Director;
    - 2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
    - 2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand) amount, for theft, fraud, forgery, perjury or an offence —
      - 2.2.4.1. involving fraud, misrepresentation or dishonesty;
      - 2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
      - 2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

### Schedule 3 – Prescribed Methods of Delivery in the Regulations

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
Any Person	<p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p>	<p>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p>
Any natural Person	<p>By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
A company or similar body corporate	<p>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive</p>

<b>Person to whom the document is to be delivered</b>	<b>Method of delivery</b>	<b>Date and Time of Deemed delivery</b>
	to the main door of the office or place of business.	evidence that the document was affixed on a different date or at a different time.
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	<p>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union.</p> <p>If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	<p>By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>