

ANNEXURE 'A'

Republic of South Africa

Companies Act, 2008

MEMORANDUM OF INCORPORATION FOR A NON-PROFIT COMPANY WITH MEMBERS

Name of company: Southern African-German Company of Commerce and Industry NPC

Registration No.: 1963/002981/09

This MOI was adopted by Special Resolution passed on _____ in substitution for the existing memorandum and articles of the Company.

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APPENDICES

Schedule 1 CORPORATE ETHICS INITIATIVE FOR BUSINESS IN SOUTH AFRICA

1. INTERPRETATION

In this MOI, –

- 1.1 words that are defined in the Companies Act but not defined in this MOI will bear the same meaning in this MOI 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 “**Association**” means the Association of German Companies of Industry and Commerce (German: Deutscher Industrie- und Handelskammertag) which is the apex organisation of 80 regional Companies of commerce and industry in Germany.
- 1.2.2 “**Chief Executive**” means the person appointed in terms of clause 15;
- 1.2.3 “**Commissioner**” means the Commissioner of the South African Revenue Service as defined in the Income Tax Act 58 of 1962 (as amended);
- 1.2.4 “**Companies Act**” means the Companies Act No. 71 of 2008, as amended, or any legislation which replaces it;
- 1.2.5 “**Company**” means Southern African-German Company of Commerce and Industry NPC or by whatever other name it may be known from time to time;
- 1.2.6 “**Corporate Ethics**” means the Corporate Ethics Initiative for Business in South Africa contained in **Schedule 1** hereto;
- 1.2.7 “**Deliver**” means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 19 and the Companies Act;
- 1.2.8 “**Deputy President**” means the member of the Board as elected in terms of clauses 13.2 and 13.4;
- 1.2.9 “**Board**” means the Board of Directors of the Company;
- 1.2.10 “**Electronic Address**” means in regard to Electronic Communication, any email address furnished to the Company by the Member;

- 1.2.11 **“Honorary Membership”** means membership conferred upon any individual in recognition of meritorious service to the public or the Company in terms of clause 11.5;
- 1.2.12 **“Ineligible or Disqualified”** means ineligible or disqualified as contemplated in the Companies Act or as contemplated in clause 13.19.1 which shall apply not only to Directors but also to members of Board committees and Prescribed Officers;
- 1.2.13 **“Life Member”** means life membership in the Senior Council conferred upon any individual in recognition of meritorious service to the public or the Company in terms of clause 14.3;
- 1.2.14 **“Member”** means a person who holds membership and specified rights in respect of that non-profit company, as contemplated in Item 4 of Schedule 1 to the Companies Act;
- 1.2.15 **“Ministry of Economics and Technology”** means the Federal Ministry of Economics and Technology (German: *Bundesministerium für Wirtschaft und Technologie*); a ministry of the German Federal Government;
- 1.2.16 **“MOI”** means this Memorandum of Incorporation;
- 1.2.17 **“President”** means the chairman of the Board and of the Senior Council;
- 1.2.18 **“Regulations”** means regulations published pursuant to the Companies Act;
- 1.2.19 **“SADC Member States”** means the Southern African Development Community member states as defined from time to time;
- 1.2.20 **“Senior Council”** means the select committee of the members of the Company duly elected in terms of clause 14.5;
- 1.2.21 **“Vice-President”** means the member of the Board as elected in terms of clauses 12.3 and 12.4 and is permanently resident in the Federal Republic of Germany.
- 1.2.22 **“Writing”** includes Electronic Communication but with regards to any Member who is entitled to vote, only to the extent that such Member has notified the Company of an Electronic Address;

- 1.3 references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4 references to Members entitled to vote present at a Meeting or acting in person shall include juristic persons represented by duly authorised 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 clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.9 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;

2. CALCULATION OF BUSINESS DAYS

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

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

3. **NON-PROFIT COMPANY**

The Company –

- 3.1 is a Non-Profit Company with voting members, incorporated for a public benefit or other object as required by Schedule 1 of the Companies Act;
- 3.2 is one, the income and property whereof, may not be distributed to its Incorporators, Members, Directors, Officers or persons related to any of them, except to the extent permitted by Schedule 1 of the Companies Act.

4. **POWERS OF THE COMPANY**

- 4.1 The Company has all the legal powers and capacity of an individual except to the extent that: --
 - 4.1.1 a juristic person is incapable of exercising any such power, or having such capacity; and
 - 4.1.2 item 1(3) and 1(4) of the Schedule 1 of the Act limits such powers and capacity.
 - 4.1.3 Nothing in this Mol shall preclude the Company:-
 - 4.1.3.1 from forming and/or having an interest in any company or companies or associations (including profit companies) subject to the Company applying all of its assets and income, however derived, to the advance of its stated objects, as set out herein, provided the Company will receive fair value for its interest;
 - 4.1.3.2 from amalgamating with other non-profit companies having the same or similar objects as the Company;
 - 4.1.3.3 from taking part in the management, supervision and control of the business or operations of any other company or business having the same or similar objects as the Company and to enter into partnerships having the same or similar objects as the Company;
- 4.2 The Objects of the Company are as set out in clause 7 below, and except to the extent necessarily implied by the stated objects, the purpose and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19 (1) (b) (ii) of the Act.

- 4.3 For the better attainment of the objects of the Company as set out in clause 7 below, the Company shall have the power:
- 4.3.1 To establish offices in SADC member states, the Republic of South Africa, the Federal Republic of Germany and in such other place or places as the Company in its sole discretion may deem necessary.
- 4.3.2 To engage staff for the purpose of the conduct of its various offices and to engage and dismiss personnel as and when deemed necessary.
- 4.3.3 To appoint managers, secretaries, accountants, auditors, attorneys and all personnel and professional personnel from time to time as may be deemed necessary.
- 4.3.4 To purchase, acquire, sell, exchange and dispose of every type of office equipment and motor vehicles and all other commodities necessary or required for the conduct of the Company's operation as and when deemed necessary or advisable.
- 4.3.5 To organise, conduct, manage and operate either alone or in conjunction with others, *inter alia*, trade fairs, exhibitions, symposia, lectures and advertising campaigns in SADC member states, the Republic of South Africa and in the Federal Republic of Germany as well as in such other countries as may from time to time be deemed necessary.
- 4.3.6 To establish arbitration tribunals for the purpose of arbitrating upon disputes between members of the company in SADC member states, in the Republic of South Africa and overseas or between members of the Company and non-members, whether in SADC member states, the Republic of South Africa or elsewhere, and for such purposes to engage lawyers, advocates, experts and all other such personnel as may from time to time be necessary in order to give full effect to this object.
- 4.3.7 To purchase, take on lease, receive or otherwise acquire and hold land, whether freehold or leasehold, within SADC member states, the Republic of South Africa or within the Federal Republic of Germany or in such places as may be deemed necessary and to build and erect or purchase, acquire, take on hire or otherwise hold buildings, wherein to house the Company's offices and or wherein to provide such facilities for members of the Company or other persons as may from time to time be deemed necessary or advisable and for such purposes to provide and

equip such buildings and erections with lighting, heating, power, drainage, sewerage, water, gas and such other necessities or conveniences as may be deemed necessary to requisite.

- 4.3.8 To invest any money not immediately required for the purposes of the Company in such manner as the Company may determine.
- 4.3.9 To borrow money not immediately required for the purposes of the Company in such manner as the Company may determine.
- 4.3.10 To borrow money for any of the purposes of the Company and to secure the repayment thereof by mortgage, hypothecation, or pledge of any of the assets of the Company movable or immovable.
- 4.3.11 To undertake and execute any trust, which may be conducive to any of the object of the Company.
- 4.3.12 To sell, improve, manage, develop, lease, mortgage, and dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company.
- 4.3.13 To draw, accept, endorse, discount, execute and issue cheques, promissory notes, bills of exchange, and other negotiable or transferable instruments.
- 4.3.14 To do all or any of the above things as principals, agents, contractors, trustees or otherwise, and by and through trustees, agents or otherwise and either alone or in conjunction with others.
- 4.3.15 To join by affiliation or otherwise organizations engaged in similar work.
- 4.3.16 To do all such other things as are incidental or conducive to the attainment of the Company's objects.

5. AMENDMENTS TO THE MOI

- 5.1 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, 17, 152 (6) (b) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Company's web site.

5.2 The Board shall submit any amendment of the MOI to the Commissioner within 30 (thirty) days of its amendment as required by the section 30 B of the Income Tax Act 58 of 1962 (as amended).

6. THE MAKING OF RULES

The Board shall publish a copy of any Rules which it may make for the Company or which it may amend on its web site, unless —

6.1 the amendment is one to correct self evident errors (including, but without limitation *eiusdem 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 Company'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 object of the Company is to foster trade and commerce in South Africa.

7.2 The main business for which the Company is formed shall be:-

7.2.1 To promote and foster such trade and commerce of all descriptions whatsoever between SADC member states, the Republic of South Africa and the Federal Republic of Germany;

7.2.2 To promote and foster such trade and commerce in such a manner as shall be in the mutual interest of both countries;

7.2.3 To safeguard and protect in as far as may be possible, the interest of all persons and/or firms engaged in reciprocal commerce between the Federal Republic of Germany and SADC Member States, including the Republic of South Africa;

7.2.4 To arrange and hold trade fairs, exhibitions, symposia, lectures and advertising campaigns at such places, whether in SADC Member States, the Republic of South Africa or the Federal Republic of Germany, as may be advisable with a view to improving trade and commerce between these countries;

7.2.5 The Company is non-political and has not, nor shall at any time, have any affiliations or connections, direct or indirect, with any political body, party or

organization in the SADC Member States, the Republic of South Africa or the Federal Republic of Germany. The Company shall not be used in any manner or circumstance whatsoever, for any political purposes whatsoever either in the SADC Member States, the Republic of South Africa or the Federal Republic of Germany;

7.2.6 The Company shall be a non-profit earning organization and any profits earned or income accruing to the company shall be applied to the promotion of the objects of the Company and the payment of dividends is prohibited;

7.2.7 The Company shall be entitled to charge such fees in respect of the services rendered by it for any persons or organizations or for members of the company, as it may deem advisable;

which business shall not be in conflict with the requirements of section 30 B of the Income Tax Act 58 of 1962 (as amended).

7.3 Substantially the whole of the activities of the Company must be directed to the furtherance of the sole or principal object and not for the specific benefit of an individual member or minority group.

7.4 The Company will comply with the reporting requirements as may be determined by the Commissioner from time to time.

7.5 The Company is not 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 tax avoidance arrangement as contemplated in Part IIA of Chapter III, or a transaction operation or scheme contemplated in section 103 (5) of the Income Tax Act 58 of 1963 (as amended).

7.6 The Company must not pay any employee, office bearer, member or other person any remuneration, as defined in the Schedule 4 of the Income Tax Act 58 of 1963 (as amended), which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered.

7.7 The Company must derive substantially the whole of its funding from annual or other long-term members or from appropriation by the government of the Republic (including foreign governments) in the national, provincial or local sphere.

8. CONDITIONS

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

- 8.1 the income and property of the Company 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 Company 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 Company or to any Member thereof in return for any services actually rendered to the Company or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
- 8.2 If, upon the winding-up or dissolution of the Company, there remains, after the satisfaction of all debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other institution(s) having objects similar to the objects of the Company or shall be donated to charitable organisation(s), provided such institution(s) or organisation(s) are/is:
- 8.2.1 an entity approved by the Commissioner in terms of section 30 B of the Income Tax Act 58 of 1962 (as amended);
- 8.2.2 a public benefit organisation approved in terms of section 30 of the Income Tax Act 58 of 1962 (as amended);
- 8.2.3 an institution, board or body which is exempt from tax under section 10 (1) (cA) (i) of the Income Tax Act 58 of 1962 (as amended);
- 8.3 The recipient of funds outlined in clause 8.2 shall be determined by the Company at or before the time of dissolution, and in default thereof by the Ministry of Economics and Technology.
- 8.4 If the Members of the Company fail at or before the time of its dissolution fail to make such determination, same shall be made by the court, provided that it complies with clause 8.2 and 8.3.

9. FINANCIAL YEAR

The financial year of the Company shall end on 31 December of **each year**.

10. ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

Accounting Records

- 10.1 The Board shall cause to be kept such accounting records as are prescribed by Section 28 of 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 business.
- 10.2 The accounting records shall be kept at the registered office of the Company and shall always be open to inspection by the members of the Board and of the Senior Council during normal business hours.
- 10.3 The Board shall from time to time determine whether and to what extent and at what time and places and under what conditions the accounting records of the Company shall be open to inspection by members not being members of the Board or the Senior Council and no member (not being a member of the Board or Senior Council) shall have any right of inspecting any accounting records or document of the Company except as conferred by the Companies Act or authorized by the Board or by the Company in general meeting.

Annual Financial Statements

- 10.4 The Company's annual financial statements shall be audited every year by an auditor appointed by the members in general meeting.
- 10.5 The Board shall from time to time cause to be prepared and laid before the Senior Council and the Company in general meeting such annual financial statements.
- 10.6 The Company shall prepare its Financial Statements in accordance with the prescribed local legislation applicable from time to time.
- 10.7 Not less than 15 (fifteen) Business Days before the date of the Annual General Meeting, copies of such financial statements which are to be laid before such meeting shall be sent to every member of the Company provided that this clause shall not require such copies to be sent to any person of whose address the Company is unaware.
- 10.8 The financial statements shall be audited by duly qualified auditors to be appointed and if necessary, removed and replaced in accordance with the relevant provisions of the Act.

- 10.9 The Company does not elect to apply the provisions of part B and part D of Chapter 3 of the Companies Act.

Other Records

- 10.10 The Board shall in accordance with the provisions of Sections 24, 25 and 26 of the Act cause minutes to be kept-
- 10.10.1 of all appointments of officers;
- 10.10.2 of names of members of the Board present at every meeting of the Company and of the Board;
- 10.10.3 of all proceedings at all meetings of the Company and of the Board.
- 10.11 The Senior Council shall cause minutes to be kept at every meeting of the Company and the Board.
- 10.12 Such minutes shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.
- 10.13 The minutes kept of every Annual General Meeting and general meeting of the Company under Section 24 (3) (c) (i) of the Companies Act may be inspected and copied as provided in Section 26 (1) (c) and (d) of the Companies Act.

11. MEMBERSHIP

Admission to Membership

- 11.1 Any individual, firm, company or association interested in trade, commerce and investment between the Federal Republic of Germany and SADC member states, including South Africa, shall be eligible for membership and subject as hereinafter provided to be admitted to such membership upon payment of such fees as may be prescribed from time to time.
- 11.2 Any application for membership is to be in writing to the Senior Council, which shall consider any such application at its next meeting and declare upon the admission or rejection of the applicant.
- 11.3 The Senior Council may decline to admit as a member any applicant, notwithstanding his willingness and ability to comply with any of the appropriate qualifications and

obligations attaching thereto. In such circumstances, the Senior Council shall be under no obligation whatsoever express or implied, to divulge or justify any or all the reasons for its decision.

11.4 When an applicant has been accepted for membership by the Senior Council, the Company shall forthwith send to the applicant written notice of this fact and a request for payment of the first annual subscription. Upon the Company receiving payment of the applicant's first annual subscription the applicant shall become a member of the Company. If such payment is not made within 2 (two) calendar months after the date of the sending of the notice, the Senior Council may nevertheless in its discretion, cancel its acceptance of the applicant for admission as a member of the Company.

11.5 Honorary Membership may be conferred upon any individual in recognition of meritorious service to the public or the Company. The election of an Honorary Member shall require the affirmative vote of a two-thirds majority of the Annual General Meeting and an Honorary Member shall not be elected unless written notice of the proposed resolution has been given to each member of the Company 10 (ten) Business Days prior to the Annual General Meeting at which the election is to be held.

Honorary Members shall have the same rights and duties as members but are not liable for any subscription or any membership fee that may be imposed.

11.6 Any person, company or association admitted to the membership of the Company shall be deemed to have agreed to be bound by the MOI and by any rules and regulations of the Company in force from time to time.

Rights and Duties of Members

11.7 A member shall be entitled, subject to clause 19.1, to receive notices of all meetings of the members of the Company and shall be entitled to be heard and to vote on each resolution considered by the meeting and to make use, free of charge, of all services offered by the Company. However, where any member including any Honorary Member requires the Company to undertake any special task, the Company shall be entitled to a refund of any disbursements made on its behalf of any member.

11.8 The rights of each member shall be personal and shall not be transferred or assigned and shall cease on the death of the member, and in the instance of a firm, company or association, on dissolution or winding up.

- 11.9 All members who are not Honorary Members shall be liable for payment of an annual subscription in accordance with the rate applicable to such member and as determined from time to time.
- 11.10 For every calendar year, the Senior Council shall have the right, subject to the approval of the Annual General Meeting of the Company, to change the amount of the annual subscription to be paid by the members if this appears to be necessary.
- 11.11 The annual subscriptions shall be due and payable in advance on the first day of January each year.
- 11.12 All members, whether they be Life Members, Honorary Members or normal members are required to uphold and abide by the Corporate Ethics contained in **Schedule 1** hereto.
- 11.13 No member may directly or indirectly have a personal or private interest in the Company.
- 11.14 The Company may not have a share or direct interest in any business, profession or occupation which is carried on by its members.

Termination of Membership

- 11.15 A member shall have the right to terminate his membership of the Company to take effect only on the first day of the following year by giving written notice of the termination to the Company on or before 31 October of the year prior to the year in which his membership is to be terminated.
- 11.16 A member's membership of the Company shall be terminated automatically upon the happening of the following events:-
- 11.16.1 The issue of a final order of sequestration or liquidation of the member concerned;
- 11.16.2 The death of any member or the legal declaration of any member as insane or as incapable of managing of his own affairs;
- 11.16.3 The contravention of the Corporate Ethics as stipulated in clause 11.12;
- 11.16.4 The non-compliance by the member with any obligations, other than those contained in clauses 11.16.1 to 11.16.3, as may attach to his membership upon

the expiration of a period of 3 (three) months reckoned from the date of the Company sending written notice to the member concerned requiring the remedy of the member's default, save that the Senior Council shall be entitled to extend the period of grace allowed to a particular member for so long and for such reasons as it may in its sole and absolute discretion deem appropriate.

11.17 A member's membership may be suspended or a member may be expelled by the Senior Council for any conduct prejudicial to the interests of the Company provided the following procedure has been adhered to:

11.17.1 Proceedings for such suspension or expulsion may be initiated by any member ("the initiating member") of the Company by lodging notice with the Company of any proposed resolution to be passed by the Senior Council for suspension or expulsion of a member under this clause not less than 20 (twenty) Business Days before the meeting at which the resolution is to be moved, and the initiating member shall whether or not he is a member of the Senior Council, be entitled to be heard on the proposed resolution at the meeting.

11.17.2 On receipt of the notice of such a proposed resolution the Company shall forthwith deliver a copy thereof to the member concerned who shall, whether or not he is a member of the Senior Council, be entitled to be heard at the meeting.

11.17.3 A resolution for the suspension or expulsion of a member shall be required to be passed by not less than two-thirds of the members of the Senior Council present at the hearing, by show of hands.

11.17.4 The member concerned, should he so desire, may make representations with respect to the resolution not exceeding a reasonable length in writing to the Company not less than 48 hours before the meeting at which the resolution is to be moved and request that notification be given to members of the Senior Council, and the Company shall:-

11.17.4.1 in any notice of the resolution given to members of the Senior Council state that such representations have been made; and

11.17.4.2 send a copy of the representations to every member of the Senior Council to whom notice of the meeting is sent, whether such notice is sent before or after receipt of the representations by the Company.

- 11.17.5 If a copy of such representations is not sent as aforesaid because it was received too late or because of the Company's default, the member concerned may (without prejudice to his right to be heard orally) require that the representations be read at the meeting.
- 11.17.6 No copy of such representations shall be sent out and the representations need not be read out at any meeting if, on the application of the Company or of any other person who claims to be aggrieved, the President is satisfied that the rights conferred by this clause are being abused to secure needless publicity for defamatory purposes.
- 11.17.7 The decision of the Senior Council shall be final and no appeal shall be possible.

Register of Members

- 11.18 The Company shall maintain at the office; a register of members as provided in Section 24 (4) (a) of the Companies Act. The register of members shall be open to inspection as provided in Section 26 (1) (e) of the Companies Act.

Meetings of members

Annual General Meeting

- 11.19 The Annual General Meeting of the Company for the election of the President, the Board and the members of the Senior Council and for the transactions of such other business as may properly be laid before the meeting, shall be held every calendar year within 6 (six) months after the expiration of the financial year of the Company at such time and place as may be determined by the Board.

Special Meetings

- 11.20 Special meetings of the Company may be called by the President; the Board or upon written request signed by 5 (five) members of the Senior Council, or by 100 (one hundred) members.
- 11.21 The members may at a special meeting, by ordinary resolution do anything which in terms of the Act may be done by a company.

Notice of Meetings

- 11.22 An Annual General Meeting and any meeting called for the passing of a special resolution shall be called by no less than 21 (twenty one) Business Days notice in Writing and any other general meeting shall be called by not less than 15 (fifteen) Business Days notice in Writing.
- 11.23 Where an Annual General Meeting is called for, the notice shall contain a copy of the financial statements to be presented or a summary thereof, together with directions for obtaining a copy of the complete annual financial statements for the preceding financial year.
- 11.24 The Company may call a Members' Meeting with less notice than required by clause 11.22, but such a Members' Meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda –
- 11.24.1 is Present at the Members' Meeting; and
- 11.24.2 votes to waive the required minimum notice of the Members' Meeting.
- 11.25 A Member entitled to vote, who is Present at a Members' Meeting –
- 11.25.1 is regarded as having received or waived notice of the Members' Meeting;
- 11.25.2 has a right to –
- 11.25.2.1 allege a material defect in the form of notice for a particular item on the agenda for the Members' Meeting; and
- 11.25.2.2 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
- 11.25.3 except to the extent set out in clause 11.25.2 is regarded to have waived any right based on an actual or alleged material defect in the notice of the Members' Meeting.
- 11.26 A notice of a Members' Meeting must be in Writing, in plain language and must include --
- 11.26.1 the date, time and place for the Meeting, and the Record Date for the Meeting;

- 11.26.2 the general purpose of the Meeting, and any specific purpose contemplated in clause 11.21, if applicable;
- 11.26.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
- 11.26.4 a reasonably prominent statement that --
- 11.26.4.1 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;
- 11.26.4.2 a proxy need not be a Member;
- 11.26.4.3 the proxy may delegate the authority granted to her/him/it as proxy, subject to any restriction in the proxy itself;
- 11.26.4.4 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;
- 11.27 Subject to the provisions of the Companies Act, the instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorized in writing or, if the appointer is a body corporate, under the hand of an officer or agent authorized by the body corporate.

The Company shall be obliged to give effect to the appointment of a proxy provided the instrument appointing such proxy shall have been deposited at the office not less than 48 (forty eight) hours before the time for holding such meeting or any adjournment thereof.

The instrument appointing a proxy shall be in the following form or in such other form as may be acceptable to the Board:

"I of being a member of the Southern African-German Company of Commerce and Industry NPC hereby appoint of or failing himof or failing him of as my proxy to attend, vote and speak for me on my behalf at the annual General meeting (as case may be) of the Company to be held on the day of and at any adjournment thereof.

Signed this day of

.....

Signature

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead.)

- 11.28 A Members' Meeting may proceed notwithstanding a material defect in the giving of the notice, subject to clause 11.30, only if every person who is entitled to exercise voting rights in respect of each item on the agenda of the Members' Meeting is present at the Members' Meeting and votes to approve the ratification of the defective notice.
- 11.29 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 --
 - 11.29.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
 - 11.29.2 the Members' Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 11.30 An immaterial defect in the form or manner of delivering notice of a Members' Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular

Member to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Members' Meeting.

Proceedings at General Meetings

- 11.31 The Annual General Meeting shall deal with and dispose of all matters prescribed in the Companies Act, including the consideration of the annual financial statements, the election of the President, the Board and members of the Senior Council, and the appointment of an auditor, and may deal with any other business laid before it.
- 11.32 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, a quorum shall be constituted if there shall be present in person or represented by duly authorised agent at such meeting at least 15 (fifteen) members or one-quarter of the total number of members (the number of which members shall not be less than 3 (three) entitled to vote at such meeting), whichever is the lesser.
- 11.33 The authority of the Company to conduct a Members' Meeting entirely by electronic communication, or to provide for participation in a Members' Meeting by electronic communication as set out in Section 63 (2) of the Companies Act is prohibited.
- 11.34 If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall adjourn to such date as the chairman of the meeting may decide, provided it shall be not earlier than 5 (five) Business Days and not later than 15 (fifteen) Business Days after the original meeting, and if at such adjourned meeting a quorum is still not present within half an hour after the time appointed for such meeting, the members present or by proxy shall be a quorum.
- 11.35 Where a meeting has been adjourned as aforesaid, the Company shall, within 3 (three) Business Days of the adjournment, publish in a newspaper circulating in the territorial area of the office a notice stating:
- 11.35.1 the date time and place to which the meeting has been adjourned
- 11.35.2 the matter before the meeting at the time when it was adjourned, and
- 11.35.3 the ground for the adjournment.

- 11.36 The President of the Company or, in his absence, the Deputy-President, shall preside as chairman at any general meeting of the Company.
- 11.37 In the absence of the President or the Deputy – President, the oldest present member of the Senior Council shall preside or, if no member of the Senior Council be present or willing to act as chairman, the meeting shall elect a chairman from among the members present.

Voting

- 11.38 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 --
- 11.38.1 not less than 5 (five) persons having the right to vote on that matter; or
- 11.38.2 persons entitled to exercise not less than 1/10th (one tenth) of the total voting rights entitled to vote on that matter,

and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Members' Meeting or adjourned Members' Meeting at which the vote objected to be 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.

- 11.39 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.
- 11.40 A poll shall be taken forthwith. The demand for a poll shall not prevent the continuation of a Members' Meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.

- 11.41 Any Member of the Company may vote at any Member's Meeting.
- 11.42 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 an particular matter contemplated in this MOI, shall require to be adopted with the support of at least 75% (seventy five per cent) of the voting rights exercised on the resolution.
- 11.43 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.
- 11.44 On a poll, every member present in person or represented by proxy shall be entitled to 1 (one) vote, but no proxy shall be able to exercise more than 3 (three) votes being those of 2 (two) members who have appointed him as their proxy and his own vote.
- 11.45 No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent 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.
- 11.46 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 Company at its Registered Office before the commencement of the Members' meeting or adjourned Members' meeting at which the proxy is used.
- 11.47 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.

11.48 In all matters submitted to a meeting, the decision of the majority shall be binding except where a special majority is required by this MOI, or by the Companies Act, when the decision of that majority of the number of members present shall be binding.

11.49 In the case of an equality of votes whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

12. PRESIDENT, DEPUTY-PRESIDENT AND VICE-PRESIDENT

12.1 There shall be eligible for election as President of the Company, any individual member or representative of a corporate member of the Company who:-

12.1.1 has been nominated by any member of the Company; and

12.1.2 has immediately prior to his election held office for at least 1 (one) year as a member of the Board or of the Senior Council of the Company.

12.2 There shall be eligible for election as Deputy-President:-

12.2.1 any member of the Board;

12.2.2 any member of the Senior Council nominated by a member of the Company.

12.3 There shall be eligible for election as Vice-President any individual member or representative of a corporate member of the Company who-

12.3.1 has been nominated by the Senior Council; and

12.3.2 is permanently resident in the Federal Republic of Germany.

12.4 At the Annual General Meeting of the Company in each year, the members of the Company shall elect a President, a Deputy-President and a Vice-President. The election shall take place in the following manner:-

12.4.1 Nomination of members as President, Deputy-President and Vice-President, shall be in writing signed by a member of the Company and shall bear the candidate's consent endorsed thereon. Such nominations shall be lodged at the at the Company's registered office at least 10 (ten) Business Days prior to the Annual General Meeting at which such election is to take place, provided that subject to clause 12.5 these requirements shall not apply to the existing President, Deputy

President and Vice-President who wish to stand for election or a further term 10 (ten) Business Days prior to the Annual General Meeting.

- 12.4.2 If the number of nominations for President, Deputy President and Vice-President does not exceed the number of vacancies for such offices, then the members so nominated for such President, Deputy President and Vice-President shall be elected by a show of hands.
- 12.4.3 If the number of nominations for President, Deputy President and Vice-President exceeds the number of vacancies for such offices, balloting papers shall be prepared containing the names of the candidates for President, Deputy President and Vice-President in alphabetical order.
- 12.4.4 Every member who is present at such Annual General Meeting shall be entitled to vote for any number of candidates not exceeding the number of vacancies and those candidates with the greatest number of votes shall be elected to fill the vacancies.
- 12.4.5 The provisions of this clause shall apply *mutatis mutandis* to the election of all Directors of the Company who are not *ex-officio* members of the Board in terms of clause 13.2 hereafter.
- 12.5 The term of the President and Deputy President shall be 1 (one) year and they may each be re-elected twice, but shall retire at the expiration of their third term as President or Deputy President respectively. The Vice-President may be re-elected as often as the members so determine.

Powers and Duties:

- 12.6 The President, Deputy President and Vice-President shall, by way of their election as such be members of the Board.
- 12.7 Apart from his powers and duties as Director, the President, and in his absence the Deputy-President, shall act as chairman of the Board, and shall preside over all general meetings and represent the Company in all matters which have not been delegated to the Chief Executive.

Termination of Office:

- 12.8 The President, Deputy President and Vice-President may resign at any time by written notice to the Company.
- 12.9 The office of the President, Deputy President or Vice-President shall become vacant if the member or its representative (as the case may be) holding such office:-
- 12.9.1 becomes bankrupt or makes any arrangement or composition with his creditors or commits any act of insolvency;
- 12.9.2 if he ceases to be a director of the Company as contemplated in clauses 13.19 to 13.20;
- 12.9.3 becomes of unsound mind;
- 12.9.4 ceases to be a member of the Company or representative of a corporate member of the Company;
- 12.9.5 is removed from office by ordinary resolution of the Company in general meeting of which notice is duly given in terms of Section 71 of the Companies Act.
- 12.10 Any vacancy in the position of President, Deputy President and Vice-President may be filled by a person appointed by the Senior Council and each person so appointed shall hold office until the next following Annual General Meeting.

13. THE BOARD

Constitution

- 13.1 Unless and until otherwise determined by the Company in general meeting the Board shall consist of 8 (eight) members. The Board, however, must always consist of at least 3 (three) members who are not connected persons in relation to each other.
- 13.2 The Board shall consist of:-
- 13.2.1 the President, Deputy-President and Vice-President;
- 13.2.2 the Directors as appointed in terms of clause 13.3 hereafter;
- 13.2.3 2 (two) *ex-officio* members, one being the immediate Past-President and the other being the Chief Executive.

Appointment of Directors

- 13.3 Appointments of Directors, including the filing of casual vacancies, shall, subject to the provisions of clause 13.9, be made by the Company in general meeting.
- 13.4 There shall be capable of being appointed as a Director of the Company any individual member or representative of a corporate member of the Company who:-
- 13.4.1 has held office for at least one year as a member of Senior Council or of the Board immediately prior to his appointment or re-appointment, as the case may be, as a Director of the Company; and
- 13.4.2 has been duly nominated by a member of the Company and indicated in advance his willingness to accept the appointment as a Director.
- 13.5 No person shall be capable of being appointed as a Director of the Company, unless the provisions of Sections 66 of the Companies Act have been complied with.
- 13.6 No person shall be eligible for appointment as a Director of the Company, if he has already served as President and subsequently as immediate Past President (*ex-officio* member of the Board).
- 13.7 No Director shall be entitled to appoint any person as an Alternate Director to himself/herself.
- 13.8 The provisions of clauses 12.4, 12.5, 12.8 and 12.9 relating to the election and termination of the office of the Deputy-President and Vice-President shall apply mutatis mutandis to the appointment of Directors and their termination of office.
- 13.9 The members of the Board may by unanimous decision appoint any other person as a Director, either to fill a vacancy or as an addition to the Board, provided the total number of Directors shall at no time exceed the maximum number stipulated above; and provided further that every appointment made in terms of this clause shall be subject to confirmation at the next Annual General Meeting of the Company.
- 13.10 All Directors shall retire from office at the Annual General Meeting following their appointment or co-option, as the case may be, but may, subject to clauses 12.5 and 13.4, and notwithstanding the provisions of clause 13.8, stand for a maximum period of 9 (nine) years.

- 13.11 The limitation of the term of Directorship contained in clause 13.10 above shall not apply to *ex-officio* the position of Chief Executive.

Powers and Duties

- 13.12 The business of the Company shall be managed by the Directors who may exercise all such powers of the Company as are not by the Companies Act or by the MOI required to be exercised by the Company in general meeting, subject to such regulations, not consistent with the aforesaid MOI or Act, as may be prescribed by the Company in General Meeting, but no regulation so prescribed shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

Proceedings

- 13.13 The members of Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit.
- 13.14 The President may at any time convene a meeting of the Board.
- 13.15 The President or in his absence the Deputy-President shall preside over all meetings of the Board as the chairman thereof. If at any meeting the chairman is not present or willing to take the chair at such meeting within 15 (fifteen) minutes of the time appointed for the commencement of such meeting the Directors shall elect a chairman from among the members present.
- 13.16 The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, but shall not be less than 3 (three).
- 13.17 Each member of the Board present at a meeting shall be entitled to exercise one vote. Questions arising at any meeting of the Board shall be decided by a majority of votes and in the case of an equality of votes the chairman shall have a second or casting vote.
- 13.18 Subject to the Companies Act, a resolution in writing signed by all members of the Board for the time being present in the Territories of Southern Africa and not being less than are sufficient to form a quorum shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

Cessation of Office as Director

- 13.19 A Director shall cease to hold office as such –

- 13.19.1 immediately she/he becomes Ineligible or Disqualified or the Board resolves to remove her/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/he shall be suspended);
- 13.19.2 when her/his term of office contemplated in clause 13.10 expires;
- 13.19.3 when she/he dies;
- 13.19.4 when she/he resigns by Written notice to the Company;
- 13.19.5 if there are more than 3 (three) Directors in office and if the Board determines that she/he has become incapacitated to the extent that the person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, and the Director 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);
- 13.19.6 if she/he is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the company;
- 13.19.7 if she/he is removed by Ordinary Resolution in terms of Section 71 of the Companies Act;
- 13.19.8 if there are more than 3 (three) Directors in office and if she/he is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director in terms of Section 71 of the Companies Act, 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);
- 13.19.9 she/he/it files a petition for the surrender of her/his/it estate or an application for an administration order, or if she/he/it commits an act of insolvency as defined in the insolvency law for the time being in force, or if she/he/it makes any arrangement or composition with her/his/its creditors generally; or
- 13.19.10 she/he/it is otherwise removed in accordance with any provisions of this MOI.

13.20 One-third of the elected Directors, to be determined by lot, shall retire each year immediately before the Annual General Meeting and shall be replaced thereat. Such retiring Directors shall be eligible for re-election.

14. THE SENIOR COUNCIL

Constitution

14.1 Unless and until otherwise determined by the Company in general meeting, the Senior Council shall consist of not less than 10 (ten) and not more than 25 (twenty five) members excluding ex-officio and Life Members.

14.2 All members of the Board shall be ex-officio members of the Senior Council.

14.3 Life Membership of the Senior Council may be conferred upon any individual in recognition of meritorious service to the Company. The election of a life member shall require the affirmative vote of a two-thirds majority of the Senior Council.

14.4 Life Members shall have the same rights and duties as the other members of the Senior Council, but shall not be liable for any membership fee that may be imposed on ordinary members.

Election

14.5 Subject to clause 14.2 no candidate, other than a member of the Senior Council retiring at a general meeting shall be eligible as a member of the Senior Council unless within the 30 (thirty) day period commencing on the 60th (sixtieth) day before the date appointed for the meeting there shall have been received at the office notice in writing signed by a member or its representatives duly qualified to attend and vote at the general meeting, which notice sets out his intention to propose such candidate for election as a member of the Senior Council and also a written consent signed by the candidate indicating his willingness to stand for election as a member of the Senior Council.

14.6 Each notice shall further contain a detailed description of the candidate, his qualifications and achievements in the form decided upon by the Board. The description, qualification and achievements of each candidate shall be sent to all members duly qualified to attend and vote at the general meeting not less than 15 (fifteen) Business Days prior to the general meeting.

- 14.7 Appointments of members of the Senior Council, including the filling of causal vacancies, and additional appointments to the Senior Council shall, subject to the provisions of clause 14.12 hereof be made by resolution of the Company in general meeting.
- 14.8 Members of the Senior Council shall hold office for a period of 2 (two) years, except for the President who shall hold office for a period of 3 (three) years.
- 14.9 All members of the Senior Council, whether appointed by general meeting or co-opted by the Senior Council, shall retire by rotation. At every Annual General Meeting one half of the members of the Senior Council shall retire from office.
- 14.10 Members of the Senior Council to retire as aforesaid in each year shall be those who have been longest in office since their election or co-option.
- 14.11 A retiring member of the Senior Council shall be eligible for re-election.
- 14.12 The members of the Senior Council, by unanimous decision, may be at any time appoint any person as a member of the Senior Council either to fill a vacancy or as an addition to the Senior Council provided that the total number of members of the Senior Council shall at no time exceed the maximum number stipulated in clause 14.1 and provided further that every appointment made in terms of this clause shall be subject to confirmation at the next Annual General Meeting of the Company.

Powers and Duties

- 14.13 The Senior Council shall act as a select committee of members and shall exercise for and on behalf of the members of the Company an inspectorate function over the affairs of the Company as managed by the Board.
- 14.14 The Board shall report to the Senior Council at each meeting of the Senior Council on all important business transacted by or on behalf of the Board;
- 14.15 The Senior Council and each individual member of the Senior Council shall have the right to inspect the minute book of the Board during working hours.
- 14.16 A copy of any resolutions passed by the Senior Council which contains a recommendation to the Board on any matter concerning the affairs of the Company shall be furnished to the Board at its next meeting by the Chief Executive or failing him

by any member of the Board present at the meeting of the Senior Council at which the resolution was passed.

- 14.17 In the event of the Board failing to adopt the recommendation of the Senior Council and to act immediately on it, the Board shall be obliged to furnish the Senior Council with written reasons as to why the recommendation or any part of it was not adopted and acted upon by it.
- 14.18 The written reasons shall be made available at the office one full day before the date appointed for the next meeting of the Senior Council for perusal by any of all the members of the Senior Council.
- 14.19 The Senior Council shall have the powers-
- 14.19.1 To suspend or expel members from and to approve admission of members to the Company in accordance with the provisions of clauses 11.1 to 11.6 and 11.17;
- 14.19.2 To determine the amount of any subscription or membership fee in accordance with clauses 11.7 and 11.9;
- 14.19.3 To have the Chief Executive convene or cause to be convened a general meeting of the members of the Company as a matter of extreme urgency in which event the notice of such meeting to members will be 5 (five) Business Days.

Proceedings

- 14.20 The members of the Senior Council shall meet together for the dispatch of business, adjourn or otherwise regulate their meetings as they deem fit.
- 14.21 The President and in his absence the Deputy-President shall preside over all meetings of the Senior Council as the chairman thereof.
- 14.22 If at any meeting the chairman is not present or willing to act within 15 (fifteen) minutes of the time appointed for the commencement of such meeting the members of the Senior Council shall elect a chairman from among the members present.
- 14.23 At all meetings of the Senior Council the quorum necessary for the transaction of any business shall be 8 (eight).

- 14.24 Each member of the Senior Council present at a meeting shall be entitled to exercise one vote, subject to the provisions of clause 14.4. The questions arising at any meeting of the Senior Council shall be decided by a majority of voters.
- 14.25 A resolution in writing signed by all the members of the Senior Council for the time being present in the Territories of Southern Africa and entitled to vote at a meeting of the Senior Council not being less than are sufficient to form a quorum shall be as valid and effectual as if it had been passed a meeting of the Senior council duly called and constituted.

Committees

- 14.26 The Senior Council may appoint any person to serve on committees for promoting the interest of the Company in connection with particular objects.
- 14.27 The President shall be an ex-officio member of all committees but each committee shall elect its own chairman.
- 14.28 The Senior Council may delegate to such committees such of its powers as may be considered necessary for the fulfilment of its duties and the committee shall in all cases submit its reports and recommendations to the Senior Council at its next meeting for approval.

Disqualification of Members of the Senior Council

- 14.29 Membership of the Senior Council shall be terminated automatically if a member or its representative (as the case may be):-
- 14.29.1 Becomes prohibited from being a Director by virtue of any provision of the Companies Act;
- 14.29.2 Retires from the Senior Council by notice in writing to the Company;
- 14.29.3 Contravenes the Corporate Ethics;
- 14.29.4 Is removed from the Senior Council by ordinary resolution of the Company in general meeting;
- 14.29.5 Is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof;

- 14.29.6 Ceases to be a member of the Company or a representative of a corporate member of the Company.

15. THE CHIEF EXECUTIVE

Appointment

The Board may, subject to approval of the Association appoint any person as Chief Executive for such period and on such terms as the Board deems fit and subject to terms of any agreement entered into in any particular case may revoke any such appointment. The Chief Executive shall be an ex-officio member of the Board.

16. PRESCRIBED OFFICERS

- 16.1 No person shall hold office as a Prescribed Officer, if she/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.
- 16.2 A Prescribed Officer shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Companies Act.

17. APPOINTMENT OF SECRETARY

The Company shall have a Company Secretary, who shall be appointed by the Chief Executive.

18. LOSS OF DOCUMENTS

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

19. NOTICES

- 19.1 Notice of every general meeting shall be given in any manner required by the Companies Act or authorized by the MOI-

- 19.1.1 to every member of the Company; and
- 19.1.2 to the auditor for the time being of the Company.

No other person shall be entitled as of right to receive notice of general meetings.

- 19.2 The accidental omission to give notice of a general meeting or of a meeting of the Board to or the non-receipt of any such notice by any member of the Company or the Board as the case may be shall not invalidate any resolution passed at any such meeting.
- 19.3 A notice may be given by the Company to any member either personally or by sending it by post in a prepaid letter addressed to such member at his registered address or by transmitting them by telegram, telefax or fax or if he has no registered address in the Territories of Southern Africa at the address (if any) within the Territories of Southern Africa supplied by him to the Company for the giving of notices to him.
- 19.4 Any Member who/which has furnished an Electronic Address to the Company, by doing so –
 - 19.4.1 authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to her/him/it; and
 - 19.4.2 confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
- 19.5 If receipt of notice by post is disputed by a member such notice shall be deemed to have been duly given provided the Company can produce a registered slip indicating that the notice was properly addressed and posted by registered post.
- 19.6 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 2, the provisions of clause 2 shall also be applied.

19.7 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.

20. INDEMNITY

20.1 For the purposes of this clause 20, "Director" includes a former Director, a Prescribed Officer, a person who is a member of the Board, Senior Council and/or of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

20.2 Every Director, employee and other officer for the time being of the Company shall be indemnified out of the assets of the Company against any liability arising out of the execution of his duties incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under the Companies Act in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust subject to the following:-

20.2.1 The Company may –

20.2.1.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation;

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

20.2.1.3 directly or indirectly indemnify a Director for –

20.2.1.3.1 any liability, other than in respect of –

20.2.1.3.1.1 any liability arising in terms of Section 77 (3) (a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or

20.2.1.3.1.2 any fine contemplated in clause 20.2.1.1;

- 20.2.1.3.2 any expenses contemplated in clause 20.2.1.2 irrespective of whether it has advanced those expenses, if the proceedings --
- 20.2.1.3.2.1 are abandoned or exculpate the Director; or
- 20.2.1.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 20.2.1.3.1.
- 20.2.2 The Company may purchase insurance to protect --
- 20.2.2.1 a Director against any liability or expenses contemplated in clause 20.2.1.2 or 20.2.1.3; or
- 20.2.2.2 the Company against any contingency including but not limited to --
- 20.2.2.2.1 any expenses --
- 20.2.2.2.1.1 that the Company is permitted to advance in accordance with clause 20.2.1.2; or
- 20.2.2.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 20.2.1.3.2; or
- 20.2.2.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 20.2.1.3.1.
- 20.2.3 The Company is entitled to claim restitution from a Director of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with Section 75 of the Companies Act.

CORPORATE ETHICS INITIATIVE FOR BUSINESS IN SOUTH AFRICA

WHEREAS, the Signatories are South African, German and other foreign companies having business operations in South Africa;

WHEREAS, the Signatories confirm their support for the implementation of the *1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and wish to strengthen their efforts to counter bribery and corruption in their business environment in South Africa;

WHEREAS, the Signatories aim to support the multi-industry and multi-national anticorruption Initiative (PACI), which was launched by the Engineering & Construction, Energy, and Mining & Metals Governors of the World Economic Forum, in cooperation with Transparency International and the Basel Institute on Governance;

WHEREAS, the Partnering Against Corruption – Principles for Countering Bribery (the “Principles”), derived from Transparency International’s Business Principles for Countering Bribery, shall therefore become the basis of the Signatories Initiative (Annex 1).

Therefore the Signatories agree as follows:

1. This initiative shall apply to and shall be binding upon the Signatories and/or their Affiliates (defined as affiliated businesses which are controlled by the signatories) business activities in South Africa.

2. Each Signatory shall respect the Principles and abide to them whenever doing business in South Africa. Each Signatory is committed to either implement anti-bribery and anti-corruption practices corresponding to these Principles in their organization and their distribution channels or use them to benchmark and improve existing programs. Each Signatory may, however, apply stricter principles for its own organization.

3. If a Signatory obtains knowledge about an actual or potential infringement of the Principles by another Signatory (which shall include any of its employees), it shall inform the respective Signatory thereof in order to allow the rectification of the (alleged) infringement.

Non-disclosure reservation: The Participants in the person of law firms and auditors are not expected and shall not disclose, use or distribute any information known to them as a result of their professional service rendering and connected with their clients and customers and shall treat any such information as confidential.

4. The Signatories will meet at least once a year and review their experiences with the implementation of the Principles in South Africa and consider any changes to the Principles which may have occurred or which may be desirable. The cooperation of the Signatories and any possible exchange of information between the

Signatories, in connection with this agreement, are limited to the scope of this Initiative. The cooperation of the Signatories under this Initiative must comply with applicable laws, in particular competitions laws.

5. In the event that a Signatory asserts that a material breach of the Principles has been committed by another of the Signatories, the Signatory may request the expulsion of the Signatory which breached the Principles (the "Defaulting Signatory"). If the occurrence of a material breach is

contested by the Defaulting Signatory, either Signatory may at any time submit the dispute to the Dispute Adjudication Board

("DAB") in accordance with Section 6. The DAB then decides if a material breach has been committed and if the Signatory shall be expelled from this Initiative.

The right to request to expel the Defaulting Signatory shall be the sole and exclusive remedy for the other Signatories regarding the material breach of the Principles.

6. All disputes in connection with this initiative, which cannot be settled between the Signatories, shall be submitted to a Dispute Adjudication Board in accordance with the ICC Dispute Board Rules ("DB Rules"). The DAB shall have three members; all members shall be appointed by the Dispute Board Centre of the South African German Company of Commerce and Industry pursuant to the DB Rules. The ruling of the DAB shall be final and binding upon the Signatories.

7. This initiative shall be governed by the laws of the Republic of South Africa.