

Republic of South Africa

Companies Act, No. 71 of 2008, as amended

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

Name of company: **SOUTH WESTERN DISTRICTS CRICKET (NPC)**

Registration No. 2015/136676/08 (dated 24 April 2015)

This MOI was first adopted by Special Resolution passed on **19 July 2014**, a copy of which was Filed together with the notice of amendment in substitution for the memorandum of association and the articles of association of the Company (which were the constitutional documents of the Company in terms of the Companies Act, No. 61 of 1973 as amended).

First amendment - 19 March 2015

Second amendment - 11 August 2015

Third amendment – 30 July 2016

Fourth amendment – 20 September 2017

## 1. INTERPRETATION

In this MOI -

- 1.1. words that are defined in the Companies Act (which are contained in **Schedule 1** for ease of reference and which do not form part of this MOI for purposes of interpretation), 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. “**Active Cricket**” means any participation in and/or influencing of any administrative and/or managerial activity related to any decision making process in the business of cricket;
  - 1.2.2. “**Address**” shall include Electronic Address, business, residential or postal or any other address furnished by the Member to the Company;
  - 1.2.3. “**Affiliate Members**” means the ~~AFFILIATED CLUBS~~ **AFFILIATED DISTRICTS COMMITTEE'S** represented in the area of jurisdiction according to the Members Register in accordance with the provisions of section 24(4) of the Companies Act. Affiliate members will have voting rights as stipulated in clause 17.5 and clause 17.32. A cricket club is a formal organization of affiliated members with the aim to promote Cricket in a specific area and is guided by a constitution.
  - 1.2.4. “**Ancillary Member**” means any cricket organisation or enterprise, other than an Affiliate Member, Associate Member or Life Member, which in the opinion of the Members’ Council meets the relevant criteria for such class of membership as determined by the Members’ Council from time to time in accordance with clause 10;
  - 1.2.5. “**Annual General Meeting**” means the annual general meeting of the Company in accordance with section 61 of the Companies Act;
  - 1.2.6. “**Area of Jurisdiction**” – The geographical area in accordance with the CSA demarcated boundaries.
  - 1.2.7. “**Associate Member**” means any cricket organisation, other than an Affiliate Member, or an Ancillary Member or Life Member, which in the opinion of the Members’ Council meets the relevant criteria for such membership as determined by the Members’ Council – namely the SWD Cricket Scorers Association, SWD Cricket Umpires Association, SWD Women’s Cricket Association and SWD

Schools Sport Cricket. Associate members will have voting rights as stipulated in clause 17.5 and clause 17.32

- 1.2.8. "the **Board**" means the Board of directors of the Company as per clause 19;
- 1.2.9. "**CEO**" means the Chief Executive Officer of the Company, who has been appointed to attend to the day-to-day management of the Company;
- 1.2.10. **Colours and Emblem**
- 1.2.9.1 Official Colours. Black
- 1.2.9.2 Playing Colours. Blue, Lime Green and White
- 1.2.9.3 Emblem. The emblem will be three ostrich feathers with the words "SWD CRICKET".
- 1.2.11. "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended or any legislation which replaces it;
- 1.2.12. "**Companies Act Regulations**" means regulations published pursuant to the Companies Act, from time to time;
- 1.2.13. "**Company**" means **South Western Districts Cricket (NPC)** or by whatever other name it may be known from time to time;
- 1.2.14. "**Cricket South Africa**" means the National Custodian of cricket in South Africa.
- 1.2.15. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 30 (*Notices*) and the Companies Act;
- 1.2.16. "**Districts**" – refers to the two geopolitical municipal districts as demarcated within and across Area of Jurisdiction.
- 1.2.17. "**Director**" or "**Directors**" means those Persons nominated, elected and appointed as such in terms of clause 19;
- 1.2.18. "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Company by a Member or a Director; Physical Address situated at South Western Districts Cricket Office Complex, Recreation Ground, Voortrekker Road, Oudtshoorn, 6625

- 1.2.19. **"Honorary Life President"** means an honour conferred by the Company upon a Person duly nominated, in Writing, and whom the Company is satisfied meets all the relevant criteria for such conferral in accordance with clause 10;
- 1.2.20. **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act (a list of which is in **Schedule 2** for ease of reference, which does not form part of this MOI for purposes of interpretation) which shall apply not only to Directors but also to members of Board committees and members of statutory committees, Prescribed Officers and the secretary of the Company;
- 1.2.21. **"Member"** means a person who holds membership in, and specified rights in respect of the Company; including Affiliate Members, Associate Members, Ancillary Members and the Honorary Life President;
- 1.2.22. **"Members Meeting"** or **"Members' Council "** means any general meeting of the Affiliate Members and Associate members, other than the Annual General Meeting, and will include special general meetings and extra-ordinary general meetings attended by the chairperson of an Affiliate Member and Associated Body or a secondi; or any other Person or Persons representing Associate Members, Ancillary Members or other cricket-related organisations that may be invited to attend and speak at such Members' Council Meetings from time to time, however, such Person or Persons will not be entitled to a vote;
- 1.2.23. **"Members Register"** means the register of Affiliate Members required to be kept in terms of section 24(4) of the Companies Act;
- 1.2.24. **"MOI"** means this Memorandum of Incorporation of the Company, as amended from time to time;
- 1.2.25. **"Non-Independent Director"** means an Affiliate Member President or a member of an Affiliated Member or Associated Body who is nominated by the Affiliate Member (Club) or Associated Bodies for election at an Annual General Meeting or Members' Council Meeting for appointment to the Board as a Non-Independent Director;
- 1.2.26. **"President"** means a Non-Independent Director who is elected by the Members' Council for appointment as chairperson of the Members' Council Meeting or the Board;
- 1.2.27. **"Public Interest Score"** means as the sum of the following –
- 1.2.27.1. a number of points equal to the average number of employees of the Company during the financial year;

- 1.2.27.2. 1 (one) point for every R1 000 000,00 (one million rand) (or portion thereof) in third party liability of the Company, at the financial year end;
- 1.2.27.3. 1 (one) point for every R1 000 000,00 (one million rand) (or portion thereof) in turnover during the financial year; and
- 1.2.27.4. 1 (one) point for every Individual who, at the end of the financial year, is known by the Company to be a member of the Company, or a member of an association that is a member of the Company;
- 1.2.28. **"Region name and Area"** means the geographical area of the South Western Districts and stretches from Heidelberg and Ladismith in the west to Plettenberg Bay and Uniondale in the east and Murraysburg in the north.
- 1.2.29. **"Round Robin Resolution"** means a resolution passed other than at a –
- 1.2.29.1. Members Council Meeting, which –
- 1.2.29.1.1. was submitted for consideration to the Persons entitled to exercise Voting Rights in relation to the resolution; and
- 1.2.29.1.2. was voted on by the requisite percentage of the Persons entitled to vote contemplated in clause 17.32 by signing a resolution in counterparts within 15 (fifteen) Business Days after the resolution was submitted to them,
- and includes Written polling of Persons entitled to vote regarding the election of Directors;
- 1.2.29.2. meeting of Directors, in respect of which, subject to clause 26.13, all the Directors being not less than a quorum of Directors, voted in favour by signing in Writing a resolution in counterparts, within 15 (fifteen) Business Days after the resolution was submitted to them;
- 1.2.30. **"SASCOC"** means the South African Sports Confederation and Olympic Committee;
- 1.2.31. **"SWDC Regulations"** means such regulations and policies adopted and amended by the Company from time to time which together with this MOI will regulate all aspects of Active Cricket in the Area of Jurisdiction;

- 1.2.32. **"Vice-President"** means a Non-Independent Director who is elected by the Members Council for appointment as vice-chairperson of the Members' Council Meeting or Board;
- 1.2.33. **"Writing"** and **"Written"** includes Electronic Communication but as regards any Member entitled to vote, only to the extent that such Member has notified the Company of an Electronic Address;
- 1.3. if there is any conflict between the provisions of this MOI and the provisions of any of the MOI of CSA, the provisions of such constitution shall prevail. The Company shall comply with the MOI of CSA.
- 1.4. references to Affiliate Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.5. references to Affiliate Members and Associate Members entitled to vote present at a Meeting or acting in person shall include Juristic Persons represented by duly authorised representatives or acting in the manner prescribed in the Companies Act;
- 1.6. all references to "section/s" in this MOI refer to the sections of the Companies Act unless the context indicates otherwise;
- 1.7. the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.8. words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the one gender shall include the other genders, and words importing persons shall include created entities (corporate or not);
- 1.9. 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;
- 1.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

## 2. **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 is a Non-Profit Company as it is -

- 3.1. incorporated for a public benefit or other object as required by item 1(1) of Schedule 1 to the Companies Act; Proof of status needs to be submitted to CSA in due time.
- 3.2. consistent with the principles set out in items 1(2) to 1(9) of Schedule 1 to the Companies Act; and
- 3.3. is prohibited from directly or indirectly distributing any of its funds to any person (otherwise than in the course of carrying out its stated objects) and is required to solely utilise its funds for the purpose that it has been established.

### 4. **OBJECTS OF THE COMPANY**

- 4.1. The main business of the Company is custodianship of all cricket activities which ultimately advance cricket in the area or jurisdiction.
- 4.2. In conducting its main business, the Company shall *inter alia* –
  - 4.2.1. promote, organise, control and administer all aspects of cricket in the area of jurisdiction in compliance with CSA directives, including men and women's cricket and youth cricket, but excluding (for the avoidance of doubt) street cricket, action cricket, indoor cricket and other non-traditional forms of the game;
  - 4.2.2. promote, provide for, regulate and manage all or any details or arrangements or other things as may be considered necessary or desirable for, or ancillary to, the comfort, conduct, convenience or benefit of cricket players and of the public or of any other persons concerned or engaged in or associated with Active Cricket;
  - 4.2.3. co-ordinate and facilitate the development of cricket in the area of jurisdiction and to foster good relations among participants in cricket;
  - 4.2.4. make, adopt, vary and publish rules, regulations and conditions for the management of Active Cricket and matters relating thereto, and to take all such steps as shall be deemed necessary or advisable for enforcing such rules, regulations and conditions;
  - 4.2.5. co-operate with and implement directives from CSA relating to domestic and international competitions; the laws of the game generally, with respect to the administration of cricket in the region.

4.2.6. adopt codes of conduct and best practices in line with the Governance Code for Sport adopted by CSA,

and do all other things to further the objects of the Company or as may be deemed incidental or conducive to the attainment of any of these objects.

## 5. CONDITIONS

5.1. The Company -

5.1.1. must apply all of its assets and income, however derived, to advance its stated objects, as set out in its MOI; and

5.1.2. subject to clause 5.1.1, may -

5.1.2.1. acquire and hold securities issued by a profit company; or

5.1.2.2. directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

5.2. The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether how the income or asset was derived, to any Person who is or was an incorporator of the Company, or who is a Director or an Affiliate Member, except -

5.2.1. as reasonable -

5.2.1.1. remuneration for goods delivered to, at the direction of, the Company;  
or

5.2.1.2. remuneration for services rendered to, at the direction of, the Company; or

5.2.1.3. payment of, or reimbursement for, reasonable expenses incurred to advance a stated object and/or the activities of the Company;

5.2.2. as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that Person or another; or

5.2.3. as a payment in respect of any rights of that Person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or

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



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

The Company has the powers and capacity of an Individual save to the extent set out in the Companies Act and Regulations, as well as the limitations in clause 5. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Companies Act empowers a Non-Profit Company to do, even if not specifically so authorised by its MOI.

## 7. **AMENDMENTS TO THE MOI**

Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with sections 16(1) and 16(4) of the Companies Act. The Board shall publish a copy of any such correction effected by the Board on the Company's web site, if any.

## 8. **THE MAKING OF RULES**

The Board shall not be entitled to make any Rules as contemplated in the Companies Act.

## 9. **INDEPENDENT DIRECTORS**

An Independent Director means a non-executive Director who -

- 9.1. is not a representative of the Affiliate Members or Associate Members
- 9.2. does not have the ability to control or significantly influence the management of the Company;
- 9.3. has not been employed by the Company, in any executive capacity for the preceding 2 (two) financing years;
- 9.4. is not a member of the immediate family of an individual who is, or has been in any of the past 2 (two) financial years, employed by the Company or a Member other than in a Director capacity;
- 9.5. is not a professional advisor to the Company or a Member other than in a Director capacity;
- 9.6. is not a significant supplier, sponsor or customer of the Company or a Member;
- 9.7. has no significant contractual relationship with the Company or a Member;
- 9.8. is free from any business or other relationship that could be seen to materially interfere with the individual's capacity to act in an independent manner; and
- 9.9. has his/her place of residence in the region.
- 9.10. and has not been associated with Active Cricket in the preceding (2) two years.

## 10. MEMBERSHIP

- 10.1 The membership of the Company shall consist of the following:
- 10.1.1 Affiliate Members;
  - 10.1.2 Associate Members;
  - 10.1.3 Ancillary Members; and
  - 10.1.4 Honorary Life-President.
- 10.2. Affiliate Members shall be responsible for the development of all amateur cricket in their respective regions, including men and women's cricket and youth cricket but excluding (for the avoidance of doubt) street cricket, action cricket, indoor cricket and other non-traditional forms of the game
- 10.3. “**Associate Member**” means any cricket organisation, other than an Affiliate Member, or an Ancillary Member or Life Member, who fulfils a responsibility and function towards the development and support of cricket– namely the SWD Cricket Scorers Association, SWD Cricket Umpires Association, SWD Women's Cricket Association and SWD Schools Sport Cricket. Associate but excluding (for the avoidance of doubt) street cricket, action cricket, indoor cricket and other non-traditional forms of the game
- 10.4. Ancillary Members are cricket organisations or enterprises that are not Affiliate Members or Associate Members but which seek to be recognized by the Company as playing an active and meaningful role in the development of cricket in the area of jurisdiction. Such Ancillary Members may include able and disabled-bodied cricket, indoor cricket, street cricket and other non-traditional forms of the game.
- 10.5. With the exception of the Honorary Life-President, applicants shall apply to the Members' Council for admission as a Member.
- 10.6 The following provisions shall apply with regard to an application for membership as an Affiliate or Associate Member, the application shall be in Writing, accompanied by -
- 10.6.1 a remittance or subscription fee of such amount as the Board may from time to time resolve;
  - 10.6.2 a copy of its constitution, or its memorandum of incorporation. In this regard, such constitution, or memorandum of incorporation, must recognise the Company as an affiliated club or associated body and that the Affiliate Member or Associate Members agrees to be bound by the provisions of this MOI and/or any Handbook from time to

time and to be bound by provisions of the CSA MOI and directives as issued by CSA from time to time.

- 10.6.3 a copy of its financial statements;
  - 10.6.4 a list of officials;
  - 10.6.5 written confirmation that the Affiliate Member or Associate Member agrees to be bound by the MOI and SWDC Regulations;
  - 10.6.6 such other or further information as may be required by the Members' Council.
- 10.7 The Members' Council will consider the requirements for Ancillary Members from time to time as and when required. The rights, privileges and obligations of the Ancillary Members (including but not limited to duration of tenure of membership) shall be set out in a Memorandum of Understanding with the Ancillary Member, unless otherwise agreed by the Members' Council. The requirements for membership may include some or all of the following—
- 10.7.1 a remittance or subscription fee of such amount as the Board may from time to time resolve;
  - 10.7.2 a copy of its constitution, or its memorandum of incorporation or charter;
  - 10.7.3 a copy of its company registration documents (if applicable);
  - 10.7.4 a document setting out the vision, mission and values of the organisation or enterprise;
  - 10.7.5 a document detailing the short, medium and long term strategy of the organisation or entity;
  - 10.6.7 a copy of its audited financial statements for the previous three years;
  - 10.6.8 financial projections, forecasts and budgets;
  - 10.6.9 a list of directors and Prescribed Officers of the organisation or entity;
  - 10.7.9 written confirmation that the Ancillary Member agrees to be bound by the MOI and SWDC Regulations; and
  - 10.7.10 such other or further information as may be required by the Members' Council.

- 10.8 Any application for membership shall be considered at an Annual General Meeting or at any postponed Annual General Meeting and the application must be received by the CEO at least 15 (fifteen) Business Days prior to the date of the Annual General Meeting and shall be subject to the approval of 2/3 (two thirds) of the Members' Council.
- 10.9 The annual general meetings of the Affiliate Members and Associate Members must be held 20 (twenty) business days prior to the date of the Annual General Meeting of the Company. The Company AGM must be held at least 30 days prior to the AGM of CSA.
- 10.10 . A Member shall ipso facto cease to be a Member if:
- 10.10.1 such Member is liquidated, wound up or placed under judicial management, whether provisionally or finally or whether compulsorily or voluntarily; or
  - 10.10.2 it commits any act of insolvency; or
  - 10.10.3 it tenders Written notice of its resignation as a Member to the Company.
- 10.11 Subject to clause 10.12, membership of a Member may be terminated or suspended forthwith at a Members' Council Meeting or Annual General Meeting, for the following reasons:
- 10.11.1 such Member has repeatedly failed to pay any subscription fees despite demand; or
  - 10.11.2 failure by a Member to remedy non-compliance with the Operational Model Agreement entered into between the Member and the Company, in accordance with the terms thereof; or
  - 10.11.3 the conduct of the Member places the Company and/or the game of cricket into disrepute through its continued membership; or
  - 10.11.4 such termination or suspension is deemed by the Members' Council to be in the best interests of the game of cricket in the area of jurisdiction.
- 10.12 Termination or suspension of a Member shall be subject to the following:
- 10.12.1. recommendation by the Board and subject to the approval of 2/3 (two thirds) of the total votes of the Members' Council;
  - 10.12.2. the termination or suspension shall not in any way extinguish any financial liability the Member has to the Company;
  - 10.12.3. the termination shall, or in the case of suspension, the suspension shall, during the period thereof result, ipso facto, in the forfeiture of all rights of payment,

Distribution or participation in the competitions, assets, income, sponsorships or monies of the Company; and

- 10.12.4. the principles of natural justice shall always prevail and the Member in question shall have been provided with (a) an opportunity to make written or oral submissions to the Board and Members' Council with respect to the grounds for termination or suspension and (b) shall have been provided with a reasonable opportunity to remedy the grounds for termination or suspension (provided such grounds are capable of remedy).
- 10.13. Honorary Life President-ship may be conferred on a person by the Company who is considered worthy of the honour and who has given outstanding service to cricket. In addition, only nominees whom the Company is satisfied have retired from all forms of Active Cricket will be eligible for this position. The Honorary Life President will be entitled to receive notice of and attend the Annual General Meeting, however, will not be entitled to any votes. Nominations for such life members shall be submitted to the CEO, not less than thirty (30) Business Days prior to the date of the Annual General Meeting, for consideration by the Members Council and shall be approved by a simple majority in number.
- 10.14. The liquidator or trustee of an insolvent Member shall not become Member of the Company as a result of their appointments as liquidator or trustee. Such Member shall *ipso facto* cease for all purposes to be Member of the Company.
- 10.15. Any Member or Associate Member who has failed to pay any subscription fees shall not be entitled to attend (whether by representation or not) the Annual General Meeting or a Members Council Meeting, nor shall it be allowed to take part in any competition conducted under the auspices of the Company, unless it has fully paid any current or arrear subscriptions.
- 10.16. All membership subscriptions shall become due and payable in advance on the 1st (first) day of May in each year.

## 11 MEMBERS REGISTER

- 11.1. The Company must maintain a Members Register of all Members in accordance with the provisions of section 24(4) of the Companies Act
- 11.2. The Company shall cause the Members Register to reflect –
- 11.2.1 the names and registration number (or other identification number) of the Members;
  - 11.2.2 the Member's business or postal Address;
  - 11.2.3 the Electronic Addresses of Members' who have furnished them;

11.2.4 the date on which the Person became Member of the Company and if applicable, the date on which such Member ceased to be a Member of the Company; and

11.2.5 any other information prescribed in terms of the Companies Act from time to time.

11.3 The Company shall not be bound to enter any person in the Members Register until that Person gives the Company an Address for entry on the Members Register.

## **12 OBLIGATIONS OF AFFILIATE MEMBERS, ANCILLARY AND ASSOCIATE MEMBERS**

### **12.1 Codes of Conduct**

The Affiliate Members, Ancillary Members and Associate Members will adopt codes of conduct and best practices in line with this MOI SWD Cricket Regulations and the directives as issued from CSA from time to time.

### **12.2 Constitutions**

12.2.1 Affiliate Members', Ancillary Members and Associate Members' constitutions and any rules or regulations formulated there under shall not be in conflict with this MOI and the MOI of Cricket South Africa.

12.2.2 The constitutions of the Affiliate Members, Ancillary Members and Associate Members and any proposed amendments thereto, must comply with this MOI and be submitted to the Company for prior Written approval.

12.2.3 The Company is entitled to exercise rights granted by its Affiliate Members and Associate Members in terms of their constitutions.

12.2.4 The Board is entitled to enforce compliance by its Affiliate Members, Ancillary Members and Associate Members with the terms of their constitutions.

### **12.3 Administrative and Financial Affairs**

The Board shall be entitled to inquire into the administrative and/or financial affairs of Affiliate Members, Ancillary members and Associate Members and, where necessary, to recommend corrective measures in this regard. In the case of Affiliate Members and Associate Members, if these measures are not implemented, the Company (through a resolution of the Board) shall be entitled, on Written notice to such member, to take over the administrative and/or financial affairs of the Member until these are placed on a satisfactory footing.

### **12.4 Step-In Rights**

12.4.1 If the Board reasonably believes that it needs to take any action in connection with the implementation of the obligations imposed on the Affiliate Members, Ancillary

Members and Associate Members in terms of this MOI and/or SWD Regulations, then the Board shall be entitled to take action in accordance with the provisions of this clause 12.4.

12.4.2 The Board shall as soon as possible after determining that action is required to be taken by the Company as contemplated in clause 12.4.1, notify the Affiliate Member or Associate Member in Writing of –

12.4.2.1 the action it wishes to take;

12.4.2.2 its reasons for taking such action;

12.4.2.3 the date when it wishes to commence such action;

12.4.2.4 the time period (the “**Step-In Period**”) which it reasonably believes will be necessary for such action; and

12.4.2.5 to the extent practicable, the effect of such action on the Affiliate Member or Associate Member and its obligations to perform in terms of this MOI and/or SWD Cricket Regulations during the Step-In Period.

12.4.3 Following the service of such notice, the Board shall take such action as notified under clause 12.4.2 and any ancillary action as it reasonably believes is necessary (the “**Necessary Action**”) and the Affiliate Member or Associate Member shall give all reasonable assistance to the Company in the conduct of such Necessary Action.

### 13 REGULATIONS

13.1 The Company may make and adopt, and from time to time amend, regulations for the purposes of regulating all matters affecting the administration, management, and control of Active Cricket. The SWD Cricket Regulations shall be approved by the Board and shall become effective on such date as may directed by the Board.

### 14 FINANCIAL YEAR

The financial year of the Company is 1 May – 30 April.

### 15 ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

15.1 The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.

- 15.2 The Company must maintain adequate records of all revenue received from CSA, donations, grants and Members' fees (if any), or in terms of any funding contracts or arrangements with any party or Person for a period of at least 5 (five) years.
- 15.3 The Company shall prepare its Financial Statements 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, or, if it qualifies in terms of the Regulations, or, if it qualifies in terms of the Companies Act, Regulations, in accordance with such standard as it shall determine, and shall have its annual Financial Statements audited in accordance with the International Standards on Auditing, as issued from time to time by the International Auditing and Assurance Standards Body or its successor body, by a Registered Auditor or a member in good standing of a professional body that has been accredited in terms of section 33 of the Auditing Professions Act (No 26 of 2005) ("**Auditing Professions Act**"), unless it qualifies by reason of its public interest score being less than 100 (one hundred) to use an accounting officer, provided that such independent review must not be carried out by any independent accounting professional who was involved in the preparation of the annual Financial Statements. For this purpose, the Company shall calculate its public interest score for each financial year, calculated as the sum of the following –
- 15.3.1. a number of points equal to the average number of employees of the Company during the financial year;
  - 15.3.2. 1 (one) point for every R1 000 000,00 (one million rand) (or portion thereof) in third party liability of the Company, at the financial year end;
  - 15.3.3. 1 (one) point for every R1 000 000,00 (one million rand) (or portion thereof) in turnover during the financial year; and
  - 15.3.4. 1 (one) point for every Individual who, at the end of the financial year, is known by the Company to be a member of the Company, or a member of an association that is a member of the Company;
- 15.4 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 Companies Act, Regulations, the Members are entitled to inspect and take copies of –
- 15.4.1 the MOI;
  - 15.4.2 amendments to the MOI;
  - 15.4.3 records in respect of Directors;



- 15.4.4 Accounting Records required to be maintained by the Company;
- 15.4.5 reports to Annual General Meetings;
- 15.4.6 annual Financial Statements;
- 15.4.7 notices and minutes of Members Council Meetings;
- 15.4.8 communications generally to Members; and
- 15.4.9 the Members Register.

In addition the Affiliate Members and Associate Members have rights to information regarding Directors declarations of interests.

- 15.5 Apart from the Affiliate Members and Associate Members, no other Person shall be entitled to inspect any of the documents of the Company (other than the Members Register and the register of Directors).
- 15.6 The Company shall notify the Members of the publication of any Audited Annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If an Affiliate Member or Associate Members demands a copy of the Audited Annual Financial Statements, the Company shall make same available to such Affiliate Member or Affiliate Member free of charge.

## 16 AUDITOR

- 16.1 The Company shall appoint an Auditor at its Annual General Meeting; provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 of the Companies Act within 15 (fifteen) Business Days after the date of the Annual General Meeting. A retiring Auditor may be automatically re-appointed at an Annual General Meeting without any resolution being passed, unless –

16.1.1 the retiring Auditor is –

- 16.1.1.1 no longer qualified for appointment; or
- 16.1.1.2 no longer willing to accept the appointment, and has so notified the Company; or
- 16.1.1.3 required to cease serving as Auditor, in terms of section 92 of the Companies Act;

16.1.2 the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.

16.2 Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2) of the Companies Act, provided that –

16.2.1 the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive financial years;

16.2.2 if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive financial years and then ceases to be the Auditor or designated auditor, the Individual may not be appointed again as the Auditor or designated auditor until after the expiry of at least 2 (two) further financial years.

16.3 The Auditor –

16.3.1 has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Directors or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;

16.3.2 has the right of access to all current and former Financial Statements and is entitled to require from the Directors or Prescribed Officers of the Company any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents as necessary for the performance of the Auditor's duties;

16.3.3 is entitled to –

16.3.3.1 attend any Members Council Meeting;

16.3.3.2 receive all notices of and other communications relating to any Members Council Meeting;

16.3.3.3 be heard at any Members Council Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions; and

16.3.4 may not perform any services for the Company that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act.

16.4 If a vacancy arises in the office of Auditor, the Board –

16.4.1 must appoint a new Auditor within 30 (Thirty) Business Days, if there was only 1 (one) incumbent Auditor; and

16.4.2 may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company.

If, by comparison with the membership of a firm at the time of its latest appointment, less than ½ (one half) of the members remain after a change in the composition of the members, that change constitutes the resignation of the firm as Auditor of the Company, giving rise to a vacancy.

16.5 Before making an appointment in terms of clause 16.4 the Board may proceed to make an appointment of a Person.

## **17 MEMBERS COUNCIL MEETINGS AND ROUND ROBIN RESOLUTIONS CONTEMPLATED IN CLAUSE 1.2.29.1**

17.1 The Company shall on an annual basis, hold at least 3 (three) meetings for Members, 2 (two) of which shall be Members Council Meetings, 1 (one) to be held in the first quarter of the year, 1 (one) during the middle of the year and the last one an Annual General Meeting.

17.2 Every Members Council Meeting shall, unless otherwise resolved by the Members, be held in locations as suggested by the CEO.

17.3 Only Affiliate Members and Associate Members of the Company and any invitees shall be entitled to attend any Annual General Meeting or Members Council Meeting.

17.4 The Company shall invite to its Annual General Meeting and Members Council meetings Independent Directors, the CEO, Affiliate members and Associate members, representatives of ancillary members and a representative of any cricket related organisation which the Company considers appropriate to attend and any other person who the Company considers to be a stakeholder, including an employee of the Company. Notice of such meetings shall be given at least 15 (fifteen) working days in advance.

17.5 Only Affiliate Members and Associate Members will be entitled to vote at Annual General Meetings and Members Council Meetings.

17.6 The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –

17.6.1 presentation of –

- 17.6.1.1 the Directors' report;
  - 17.6.1.2 Audited Financial Statements for the immediately preceding financial year;
  - 17.6.1.3 the Audit committee report; and
  - 17.6.1.4 the presentation of the report of the Social and Ethics Committee;
  - 17.6.2 election of Directors, office bearers or Prescribed Officers to the extent required by the Companies Act or the MOI;
  - 17.6.3 appointment of an Auditor for the ensuing year;
  - 17.6.4 appointment of an Audit committee;
  - 17.6.5 the consideration of applications for membership and,
  - 17.6.6 any matters raised by Members, with or without advance notice to the Company.
- 17.7 The Company shall, as determined by the Board, either –
- 17.7.1 hold a Members Council Meeting in order to consider one or more resolutions; or
  - 17.7.2 as regards such resolution/s that could be voted on at a Members Council Meeting, other than an Annual General Meeting, instead require them to be dealt with by Round Robin Resolution contemplated in clause 1.2.30.
- 17.8 Within 10 (ten) Business Days after a Round Robin Resolution is adopted, the Company must Deliver a statement describing the results of the vote, consent process, or election to every Affiliate Member and Associate Member who was entitled to vote on or consent to the Round Robin Resolution.
- 17.9 A Company must hold a Members Council Meeting or put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.30.
- 17.9.1 at any time that the Board is required by the Companies Act or the MOI to refer a matter to Affiliate Members and Associate Members entitled to vote for decision; or
  - 17.9.2 whenever required to fill a vacancy on the Board other than in accordance with clause 19.9.

- 17.10 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 Council 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 a foregoing.
- 17.11 The Board or Affiliate Members and Affiliate Members holding not less than 50% (fifty per cent) of the Voting Rights may, whenever it thinks fit, convene a Members Council Meeting or put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.30. A Members Council Meeting must be convened, or the Board must put the proposed resolution by way of a Round Robin Resolution contemplated in clause 1.2.30, if one or more Written and signed demands for such a Members Council Meeting or Round Robin Resolution is/are delivered to the Company, and —
- 17.11.1 each such demand describes the specific purpose for which the Members Meeting Council is proposed; and
- 17.11.2 in aggregate, demands for substantially the same purpose are made and signed by the Affiliate Members and Associate Members at the earliest time specified in any of those demands, of at least 10% (ten per cent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Members Council Meeting.
- 17.12 Round Robin Resolutions contemplated in clause will be passed if signed by Persons 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 Council Meeting.
- 17.13 Every Members Council Meeting shall be held where the Board determines from time to time. The authority of the Company to conduct a Members Council Meeting entirely by Electronic Communication, or to provide for participation in a Members Council Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Members Council Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Members Council Meeting, as set out in section 63(2) of the Companies Act, is not limited or restricted.
- 17.14 A Members Council Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Company (and for this purpose clause 30.3 shall not apply) to all Affiliate Members and Associate Members entitled to vote or Persons otherwise entitled to receive notice. Provided that the CEO has taken reasonable steps to give notice of a Members Council Meeting, the accidental omission to give and/or the accidental giving of a defective

notice (provided that by reason of such defect it is not misleading) of a Members Council Meeting to, or the non-receipt of notice of a Members Council Meeting by, any Person entitled to receive notice shall not invalidate the proceedings of that Members Council Meeting. The notices of Members' Council Meetings shall contain the business to be considered at such Members' Council Meeting.

17.15 The Company may call a Members Council Meeting with less notice than required by clause 17.14, but such a Members Council Meeting may proceed only if every Person who is entitled to exercise Voting Rights in respect of any item on the meeting agenda -

17.15.1 is Present at the Members Council Meeting; and

17.15.2 votes to waive the required minimum notice of the Members Council Meeting.

17.16 An Affiliate Member or Associate Member entitled to vote, who is Present at a Members Council Meeting –

17.16.1 is regarded as having received or waived notice of the Members Council Meeting if at least the required minimum notice was given;

17.16.2 has a right to —

17.16.2.1 allege a Material defect in the form of notice for a particular item on the agenda for the Members Meeting; and

17.16.2.2 participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice;

17.16.3 except to the extent set out in clause 17.16.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Members Council Meeting.

17.17 A notice of a Members Council Meeting must be in Writing, in plain language and must include -

17.17.1 the date, time and place for the Members Council Meeting, and the Record Date for the Members Council Meeting;

17.17.2 the general purpose of the Members Meeting, and any specific purpose contemplated in clause 17.1, if applicable;

17.17.3 in the case of the Annual General Meeting a summarised form of the Financial Statements to be presented and directions for obtaining a copy of the complete annual financial statements for the preceding financial year;

17.17.4 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Members Council Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted; (provided that proposed resolutions may still be considered at a Members' Council Meeting even if prior notice thereof has not been provided, with the consent of the President)

17.17.5 a reasonably prominent statement that -

- 17.17.5.1 an Affiliate Member and Associate Member entitled to attend and vote at the Members Council Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members Council Meeting in the place of the Affiliate Member or Associate Member entitled to vote or give or withhold written consent on behalf of the Affiliate Member or Associate Member entitled to vote to a decision by Round Robin Resolution contemplated in clause 1.2.30
- 17.17.5.2 a proxy shall be a Natural Person from the area/region of the Affiliate Members or Associate Member;
- 17.17.5.3 an Affiliate Member or Associate Member may not appoint more than 1 (one) proxy to exercise Voting Rights held by that Affiliate Member or Associate Member which entitle it to vote at any Members Council Meeting;
- 17.17.5.4 the proxy may not delegate the authority granted to him as proxy;
- 17.17.5.5 participants in a Members Council 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 Council Meeting;
- 17.17.5.6 participation in the Members Council Meeting by Electronic Communication is available, and provide any necessary information to enable Affiliate Members or Associate 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 Affiliate Member or

Associate Member entitled to vote or proxy, except to the extent that the Company determines otherwise.

- 17.18 A Members Council Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 17.19, only if 50 (fifty) percent of Persons who is entitled to exercise Voting Rights in respect of each item on the agenda of the Members Council Meeting is present at the Members meeting and votes to approve the ratification of the defective notice.
- 17.19 If a Material defect in the form or manner of giving notice of a Members Council Meeting relates only to one or more particular matters on the agenda for the Members Council Meeting -
- 17.19.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and
- 17.19.2 the Council Members Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 17.18.
- 17.20 An immaterial defect in the form or manner of Delivering notice of a Members Council Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Affiliate Member or Associate Member to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Members Council Meeting.
- 17.21 Business may be transacted at any Members Council Meeting only while a quorum is present.
- 17.22 The quorum necessary for the commencement of a Members Council Meeting shall be sufficient Persons present at the Members Council Meeting to exercise, in aggregate, at least 51% (fifty one 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 Council Meeting.
- 17.23 A matter to be decided at the Members Council Meeting may not begin to be considered unless sufficient Persons are present at the Members Meeting to exercise, in aggregate, at least 51% (fifty one per cent) of all of the Voting Rights that are entitled to be exercised on that matter at the time the matter is called on the agenda for the Members Council Meeting.
- 17.24 If within 30 (thirty) minutes from the time appointed for the Members Council Meeting to commence, a quorum is not present or if the quorum requirements in clause 17.23 cannot be achieved for any one or more matters, the Members Meeting shall be postponed, without motion, vote or further notice, subject to clause 17.26, for 1 (one) week to the same time on the same day in the next week or, if that day be a public holiday, to the next succeeding day which is not a public holiday, and if at such adjourned Members Council Meeting a quorum



is not present within 30 (thirty) minutes from the time appointed for the Members Council Meeting then, the Person/s entitled to vote Present shall be deemed to be the requisite quorum.

17.25 A Members Council Meeting, or the consideration of any matter being debated at the Members Council Meeting, may be adjourned from time to time without further notice on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights —

17.25.1 held by all of the Persons who are present at the Members Council Meeting at the time; and

17.25.2 that are entitled to be exercised on at least one matter remaining on the agenda of the Members Council Meeting, or on the matter under debate, as the case may be.

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

17.26 No further notice is required to be Delivered by the Company of a Members Council Meeting that is postponed or adjourned as contemplated in clause 17.24, unless the location or time for the Members Council Meeting is different from -

17.26.1 the location or time of the postponed or adjourned Members Council Meeting; or

17.26.2 a location or time announced at the time of adjournment, in the case of an adjourned Members Council Meeting.

17.27 The President shall preside as chairperson at every Members Council Meeting. If there is no such chairperson, or if at any Members Council Meeting he is not present within 30 (thirty) minutes after the time appointed for holding the Members Meeting or is unwilling to act as chairperson, the Vice-President shall preside as chairperson. If the Vice-President is unable or unwilling to act as chairperson, Persons entitled to vote which are Present shall select a Director present at the Members Council Meeting, or if no Director be present at the Members Meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall select one of their number which is Present to be chairperson of the Members Council Meeting.

17.28 The following matters shall be considered by the Member's Council at Members' Council Meetings:

17.28.1 Amendments to the MOI and CSA Regulations;

17.28.2 Consideration and approval of the Company's vision, mission and values;

17.28.3 Ratification of the Company's strategy as proposed by the Board;

17.28.4 Election and removal of Directors;

17.28.5 Admission, termination and suspension of Members in accordance with clause 10;

17.28.6 Consideration and approval of material changes to the competition structure of the Company's cricket events; and

17.28.7 Such other matters as may be prescribed by the Companies Act.

17.29 At any Members Council 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 –

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

17.29.2 a Person/s entitled to exercise not less than 1/10<sup>th</sup> (one tenth) of the total Voting Rights entitled to vote on that matter; or

17.29.3 the chairperson of the Members Council Meeting,

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 Council Meeting or adjourned Members Council Meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Members Council Meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the Members Council Meeting, whose decision shall be final and conclusive.

17.30 If a poll is duly demanded it shall be taken in such manner as the chairperson directs save that it shall be taken forthwith, and the result of the poll shall be deemed to be the resolution of the Members Council 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 Council Meeting, shall be deemed to be the resolution of the Members Council Meeting at which the poll is demanded. The demand for a poll shall not present the continuation of a Members Council 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.

- 17.31 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the Members Council 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.
- 17.32 Every resolution of the 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 at least 75% (seventy five per cent) of the Voting Rights exercised on the resolution.
- 17.33 On a show of hands and on a poll a Person entitled to vote Present at the Members Council Meeting shall have only 1 (one) vote unless a proxy represents more than one Person entitled to vote, in which case such proxy shall have such number of votes as the number of voting Persons that he or she represents.
- 17.34 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 Affiliate Member and Associate Member entitled to vote chooses to act directly and in person in the exercise of any rights as an Affiliate Member or Associate Members entitled to vote.
- 17.35 The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarial certified copy of such power or authority shall be delivered to the Company or any Person which it has identified in the notice of Members Council Meeting as being the Person to whom proxies may be delivered on behalf of the Company, not less than 24 (twenty four) hours prior to the time scheduled for the commencement of the Members Council Meeting.
- 17.36 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, provided that no intimation in Writing of such death, insanity or revocation as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Members Council Meeting or adjourned Members Council Meeting at which the proxy is used.

- 17.37 Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form provided that it is in Writing. The Company shall supply a generally standard form of proxy upon request by an Affiliate Member or Associate Member entitled to vote.
- 17.38 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 he sees fit unless the proxy indicates otherwise.

## 18 RECORD DATE

- 18.1 If the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.
- 18.2 If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –
- 18.2.1 in the case of a Members Council Meeting, the latest date by which the Company is required to Deliver to Affiliate Members and Associate Members entitled to vote, notice of that Members Council Meeting; or
  - 18.2.2 the date of the action or event, in any other case.
- 18.3 The Company must publish a notice of a Record Date for any matter by –
- 18.3.1 Delivering a copy to each Affiliate Member and Associate Member (and clause 30.3 shall not apply); and
  - 18.3.2 posting a conspicuous copy of the notice –
    - 18.3.2.1 at its principal office; and
    - 18.3.2.2 on its web-site, if it has one.

## 19 DIRECTORS, ELECTION OF DIRECTORS AND CASUAL VACANCIES

- 19.1 Unless otherwise determined by a meeting by the Members Council the number of Directors shall not be less than (12) twelve nor more than 17 (seventeen).
- 19.2 Any failure by the Company at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company provided that the vacancy is filled within 20 (twenty) Business days in accordance with the applications of the provisions contained in 19.9.

- 19.3 The Members Council may from time to time by Special Resolution increase or reduce the number of Directors.
- 19.4 The Board shall consist of at least 5 (five) Independent Directors and at least 7 (seven) Non-Independent Directors.
- 19.5 Subject to the provisions of clause 19.4, the process and procedures for the nomination, election and appointment of Directors will result in the Board being constituted as follows -
- 19.5.1 at least 5 (five) Persons who are recommended by a selection panel convened by the Members Council for election as Independent Directors for appointment to the Board plus 1 (one) Person who is nominated by the Independent Directors and approved by the Members Council to serve as an Alternate Independent Director.
  - 19.5.2 at least 7 (seven) Persons who are elected by the Members' Council to be appointed as Non-Independent Directors by the Affiliate Members for appointment to the Board plus 1 (one) Person who is nominated by the Non-Independent Directors and approval by the Members Council to serve as an Alternate Non-Independent Director provided that the President and Vice-President shall be nominated from the ranks of the Non-Independent Directors for election by the Affiliate Members and Associate Members. The President and Vice-President must relinquish their position as an Executive Committee member of an Affiliate Member (club) if elected as a non-Independent Director serving as either President or Vice-President.
  - 19.5.3 the chairperson of the Board will be the President of the Company and the Members Council and shall preside over the Annual General Meeting or the Members' Council Meetings; and
  - 19.5.4 a lead Independent Director must be identified and designated from amongst the ranks of the Independent Directors (who were elected for appointment to the Board) and appointed by the Board.
- 19.6 Written nominations for the elections of the Independent Directors shall be submitted to the CEO not less than 20 (twenty) Calendar Days prior the holding of the Annual General Meeting and/or Members Council Meetings. Such nominations must contain written acceptances by the nominated candidates.
- 19.7 Written nominations for the elections of the Non-Independent Directors shall be submitted by the Affiliate Members or Associate Members to the CEO not less than 20 (twenty) Calendar Days prior to the holding of the Annual General Meeting and/or Members Council Meetings. Such nominations must contain written acceptances of the nominated candidates.

- 19.8 The CEO shall be entitled to attend all Board meetings as a permanent invitee.
- 19.9 In the event of any vacancy occurring on the Board, the following provisions shall apply -
- 19.9.1 in respect of a Non-Independent Director, the vacancy shall be filled by an Affiliate Member or Associate Member, nominated for election and appointment at the Members' Council; and
  - 19.9.2 in respect of an Independent Director, the vacancy shall be filled by a Person nominated by the selection panel for election and appointment at the Member's Council.
  - 19.9.3 The Independent Nominations Panel for the appointment of Independent Directors will be approved by the Board.
- 19.10 The Independent Directors elected shall be appointed for a term of 3 (three) years and shall be eligible for re-election, subject to qualification and provided that a Director shall not be entitled to serve for longer than 2 (two) consecutive terms.
- 19.11 The Non-Independent Directors elected shall be appointed for a term of 3(three) years and shall be eligible for re-election, subject to qualification and provided that a Director shall not be entitled to serve for longer than 2 (two) consecutive terms.
- 19.12 The President and Vice-President may be re-elected in that capacity provided that neither shall be entitled to serve for longer than 2 (two) consecutive terms.
- 19.13 Any nomination, election and appointment of a Director shall be subject to the provisions of this MOI and shall take cognisance of demographics, transformation, gender equity, business and sport skills and/or knowledge, independence and acumen.
- 19.14 The Members' Council shall have power at any time, and from time to time, to appoint any person as a Director but so that the total number of Directors shall not at any time exceed the maximum number fixed by or in terms of this MOI.
- 19.15 Subject to the provisions contained in this clause 19, each of the Directors, other than the Directors or a Director contemplated in clause 19.19 shall be elected (which in the case of a vacancy arising shall take place at the next Annual General Meeting), in accordance with clauses 19.4 and 19.16, to serve as a Director.
- 19.16 In any election of Directors, the election is to be conducted as follows –
- 19.16.1 a series of votes of those entitled to exercise votes regarding such election, each of which is on the candidacy of a single individual to fill a single vacancy, with the

series of votes continuing until all vacancies on the Board at that time have been filled; and

19.16.2 in each vote to fill a vacancy –

19.16.2.1 each Voting Right entitled to be exercised may be exercised once; and

19.16.2.2 the vacancy is filled only if a majority of the voting rights exercised support the candidate.

- 19.17 No Person shall be elected as a Director, if 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.
- 19.18 No election of a Director shall take effect until he has delivered to the Company a Written consent to serve.
- 19.19 Notwithstanding the provisions contained in clause 19.10, any vacancy occurring on the Board may be filled immediately by the Board, but the Individual so appointed shall cease to hold office at the termination of the first Members Council Meeting (or Annual General Meeting) to be held after the appointment of such Individual as a Director, unless he is elected at such Members Council Meeting or by Round Robin Resolution contemplated in clause 1.2.30.
- 19.20 The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as a quorum, the continuing Directors or Director may act only for the purpose of summoning a Members Council Meeting.
- 19.21 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 Council Meeting for the purpose of appointing Directors.

## **20 CESSATION OF OFFICE AS DIRECTOR**

20.1 A Director shall cease to hold office as such –

- 20.1.1 immediately he becomes Ineligible or Disqualified or the Members Council of the Board resolves to remove 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 he shall be suspended); or

- 20.1.2 when his term of office contemplated in clauses 19.10 and 19.11 expires; or
- 20.1.3. when the membership of the Affiliate Member which he represents on the Board is terminated; or
- 20.1.4. when the Director is suspended or removed as President or Chairman of the Member by the Member concerned; or
- 20.1.5 when he dies; or
- 20.1.6 when he resigns by Written notice to the Company; or
- 20.1.7 if there are more than 3 (three) Directors in office and if the Members Council determines that 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 he shall be suspended); or
- 20.1.8 if 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; or
- 20.1.9 if he is removed by a Special Resolution by the Members Council or
- 20.1.10 if there are more than 3 (three) Directors in office and if he is removed by resolution of the Members Council 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 he shall be suspended); or
- 20.1.11 he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally; or
- 20.1.12 during his term of office as an Independent Director he ceases to be independent as contemplated in clauses 9.1 and 9.8, save for the fact that a person will not be disqualified during his term of office in terms of clause 9.9. simply by virtue of his position as an Independent Director. If during the term of his office as an



Independent Director he associates himself with cricket in terms of clause 9.9 other than by virtue of his appointment as an Independent Director, he shall be disqualified.

20.1.13 he is otherwise removed in accordance with any provisions of this MOI.

## **21 REMUNERATION OR REIMBURSEMENT**

- 21.1 The Company may pay or grant any type of remuneration contemplated in sections 30(6)(b) to (g) of the Companies Act.
- 21.2 A Director may be appointed to more than one Board or statutory committee.
- 21.3 The remuneration of management and/or the Prescribed Officers, as determined by the Remuneration & Human Resources Committee, shall be market related and subject always to the provisions of clause 5.
- 21.4 The Directors or members of Board committees and members of statutory committees shall be entitled to such remuneration for their services as Directors or members of Board committees and members of statutory committees, in accordance with clause 5 and as may have been determined from time to time by Special Resolution within the previous 2 (two) years.
- 21.5 In addition, the Directors shall be entitled to all reasonable expenses in travelling (including hotels/accommodation) to and from meetings of the Directors, and members of the Board committees and members of statutory committees shall be entitled to all reasonable expenses in travelling (including hotels/accommodation) to and from meetings of members of the Board committees and members of statutory committees.

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

The Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or a director of a related or inter-related company, or to a Person related to any such Director, other than a transaction if it –

- 22.1 is in the ordinary course of the Company's business and for fair value;
- 22.2 constitutes an accountable advance to meet -
- 22.2.5 legal expenses in relation to a matter concerning the Company; or
- 22.2.6 anticipated expenses to be incurred by the Person on behalf of the Company;
- 22.3 is to defray the Person's expenses for removal at the Company's request; or

22.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

## 23 GENERAL POWERS AND DUTIES OF DIRECTORS

23.1 The Directors shall have the powers of management granted to the Directors in terms of section 66(1) of the Companies Act.

23.2 For the avoidance of doubt, such powers shall include but not be limited to:

23.2.1 the granting of loans to Members;

23.2.2 the provision or withholding of funds to Members;

23.2.3 the formulation and approval of strategic plans for the Company;

23.2.4 the formulation and approval of CSA Regulations; and

23.2.5 the formulation and approval of policies and procedures to manage the affairs of the Company.

23.3 The Board may meet from time to time as may be necessary to properly execute their powers and fulfil their duties as directors of the Company.

23.3 The Directors may -

23.3.5 establish and maintain any non-contributory or contributory pension, superannuation, provident and benefit funds for the benefit of; and

23.3.6 give pensions, gratuities and allowances to and make payments for or towards the insurance of,

any persons who are employees or ex-employees (including Directors or ex-Directors) of the Company, or of any company which is or was a Subsidiary of the Company or is or was in any way allied to or associated with it or any such Subsidiary, and the wives, widows, families and dependants of such persons.

23.4 The Board may from time to time appoint one or more Persons to the office of CEO or manager for such period and at such remuneration (whether by way of salary or commission, or partly in one way and partly in another) and generally on such terms they may think fit, and it may be made a term of his appointment that he be paid a pension, gratuity or other benefit on his retirement from office.

23.5 The Board may from time to time entrust to and confer upon a CEO or manager for the time being such of the powers vested in the Directors as they may think fit, and may confer such

powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers.

23.6 A manager appointed pursuant to the provisions hereof shall not be regarded as an agent or delegate of the Directors and after powers have been conferred upon him by the Board in terms hereof he shall be deemed to derive such powers directly from this clause.

## **24 BOARD COMMITTEES**

24.1 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.

24.2 No Person shall be appointed as a member of a Board committee, if 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.

24.3 There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.

24.4 A member of a Board committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Companies Act.

24.5 Committees of the Board may consult with or receive advice from any Person.

24.6 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.

24.7 Committees shall act in accordance with the provisions of any Terms of Reference approved by the Board from time to time.

## **25 PERSONAL FINANCIAL INTERESTS OF DIRECTORS AND PRESCRIBED OFFICERS AND MEMBERS OF COMMITTEES**

25.1 For the purposes of this clause 25 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Committees*), –

- 25.1.5 "Director" includes a Prescribed Officer, and a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board;
- 25.1.6 "Related Person" also includes any other company of which the Director or a Related Person is also a director, or a close corporation of which the Director or a Related Person is a member.
- 25.2 This clause 25 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Committees*) shall not apply to a Director in respect of a decision that may generally affect –
- 25.2.5 all of the Directors in their capacity as Directors, but in that case all the Directors shall act in accordance with and as if section 75(3) of the Companies Act were applicable unless the Directors are acting pursuant to an authorisation given by the Members' Council for the Directors to make a decision within certain thresholds, relating to their capacity as Directors; or
- 25.2.6 a class of Persons, despite the fact that the Director is one member of that class of Persons, unless the only members of the class are the Director or Persons Related or inter-related to the Director. In such event the Director shall be treated as not having a Personal Financial Interest, unless the class is predominantly made up of Directors and Persons Related or Inter-related to such Directors and in the circumstances the conflict of the Director requires the provisions of this clause 25 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Committees*) to apply.
- 25.3 At any time, a Director may disclose any Personal Financial Interest or other conflict of interest in advance, by delivering to the Board a notice in Writing setting out the nature and extent of that Personal Financial Interest or other conflict of interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.
- 25.4 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest or other conflict of interest exists or continues to exist.
- 25.5 If a Director has a Personal Financial Interest or other conflict of interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest or other conflict of interest in the matter, the Director –

25.5.5 must disclose the Personal Financial Interest or other conflict of interest and its general nature before the matter is considered at the meeting;

25.5.6 must disclose to the meeting any Material information relating to the matter, and Known to the Director;

25.5.7 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

25.5.8 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 25.5.6 and 25.5.7;

25.5.9 must not take part in the consideration of the matter, except to the extent contemplated in clauses 25.5.6 and 25.5.7;

25.5.10 while absent from the meeting in terms of this clause 25.4 -

25.5.10.1 is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and

25.5.10.2 is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

25.5.11 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

25.6 If a Director acquires a Personal Financial Interest or other conflict of interest in an agreement or other matter in which the Company has a Material interest or other conflict of interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board the nature and extent of that Personal Financial Interest or other conflict of interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest or other conflict of interest.

25.7 A decision by the Board, or a transaction or agreement approved by the Board is valid despite any Personal Financial Interest or other conflict of interest of a Director or Person Related to the Director, only if –

25.7.1 it was approved following the disclosure of the Personal Financial Interest or other conflict of interest in the manner contemplated in this clause 25 (*Personal Financial Interests of Directors and Prescribed Officers and Members of Committees*); or

25.7.2 despite having been approved without disclosure of that Personal Financial Interest, or other conflict of interest it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or other conflict of interest or so declared by a court.

## 26 PROCEEDINGS OF DIRECTORS

26.1 The CEO authorised by the Board -

26.1.1 may, at any time, summon a meeting of the Directors; and

26.1.2 must call a meeting of the Directors if required to do so by at least 4 (four) Directors.

26.2 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 the Republic of South Africa.

26.3 Unless otherwise resolved by the CEO, all the Directors' meetings shall be held in the city or town where the Company's Registered Office is for the time being situated.

26.4 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.

26.5 If all of the Directors -

26.5.1 acknowledge actual receipt of the notice; or

26.5.2 are present at a meeting of the Directors; or

26.5.3 waive notice of the meeting,

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

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

26.7 A quorum shall consist of 50% (fifty per cent) plus 1 (one), rounded up to the nearest full number, of the Directors entitled to vote, one of whom shall be an Independent Director, within the meaning of clause 9.

- 26.8 For the purpose hereof a Director who has authorised another Director to vote for him at a meeting in terms of clause 26.17 shall, if the Director so authorised is present at the meeting, be deemed to be present himself.
- 26.9 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.
- 26.10 In the case of a tied vote the chairperson may not cast a deciding vote even if the chairperson did not initially have or cast a vote and the matter being voted on fails.
- 26.11 The chairperson of the Board will be appointed in accordance with the provisions of clause 19.5.3.
- 26.12 If at any meeting the chairperson so elected is not present within 15 (fifteen) minutes after the time appointed for holding it, or if the President is not present or unwilling to act within 15 (fifteen) minutes after that time, the Directors present may choose 1 (one) of their number to be chairperson of the meeting.
- 26.13 The Company must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes –
- 26.13.1 any declaration given by notice or made by a Director as required by clause 25 (*Personal Financial Interests of Directors and Prescribed officers and Members of Committees*);
  - 26.13.2 every resolution adopted by the Board.
- 26.14 Resolutions adopted by the Board –
- 26.14.1 must be dated and sequentially numbered; and
  - 26.14.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 26.15 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson 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, without the necessity for further proof of the facts stated.

26.16 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 has received notice of the matter to be decided upon.

26.17 A Director unable to attend a Directors' meeting may authorise any other Director to vote for him at that meeting, and in that event the Director so authorised shall have a vote for each Director by whom he is so authorised in addition to his own vote. Authority in terms of this clause 26 must be In Writing (which may take the form of an Electronic Communication, telefax or telegram) and must be handed to the Person presiding at the meeting at which it is to be used.

## **27 PRESCRIBED OFFICERS**

27.1 No Person shall hold office as a Prescribed Officer, if 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 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 him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

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

## **28 APPOINTMENT OF SECRETARY**

The Directors of the Company are authorised to appoint a company secretary who is permanently resident in the Republic and who, in the opinion of the Directors, has the requisite knowledge and experience to carry out the duties of a company secretary.

## **29 LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any document sent through the post either to the registered address of any Members or to any other Address requested by the Member.

## **30 NOTICES**

30.1 The Company may give notices, documents, records or notices of availability of the a foregoing by personal delivery to a Member or by sending them prepaid through the post or by transmitting them by telegram or fax or by Electronic Communication to such Person's last known address. The Company must give notice of availability of a document, record or statement to a Member either to his last known delivery Address or last known Electronic Address.



- 30.2 Any Member who/which has furnished an Electronic Address to the Company, by doing so –
- 30.2.1 authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the a foregoing to it; and
  - 30.2.2 confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
- 30.3 Any notice required to be given by the Company to the Members and in respect of which the Companies Act does not expressly prohibit the provisions of this clause from applying, shall be sufficiently given by posting it on the Company's web site, if any, until at least the date when the event to which the notice refers occurs, provided that the Company gives a notice similar to a notice of availability in the manner contemplated in clause 30.1.
- 30.4 A Member shall be bound by every notice. The Company shall not be bound to enter any Person in the Members Register until that Person gives the Company an Address for entry on the Members Register.
- 30.5 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the a foregoing, contemplated in the Companies Act Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the a foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations (which is included as **Schedule 3** for easy reference but which does not form part of this MOI for purposes of interpretation). 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 (*Calculation of Business Days*)), the provisions of clause 2 (*Calculation of Business Days*) shall also be applied.
- 30.6 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 Affiliate Member or Associate Member indicating in the Electronic Communication that it is the Affiliate Member's or Associate Member's intention to use the Electronic Communication as the medium to indicate the Affiliate Member's or Affiliate Member's approval of the information in, or the Affiliate Member's or Associate Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Affiliate Member or Associate Member sending it in the body of the Electronic Communication.

## 31 INDEMNITY

- 31.1 For the purposes of this clause 31 (*Indemnity*), "Director" includes a former Director, a Prescribed Officer, a person who is a member of a Board or statutory committee, irrespective of whether or not the Person is also a member of the Board.
- 31.2 The Company may -
- 31.2.1 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 unless the conviction was based on strict liability;
  - 31.2.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
  - 31.2.3 directly or indirectly indemnify a Director for –
    - 31.2.3.1 any liability, other than in respect of -
      - 31.2.3.1.1 any liability arising in terms of sections 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
      - 31.2.3.1.2 any fine contemplated in clause 31.2.1;
    - 31.2.3.2 any expenses contemplated in clause 31.2.2, irrespective of whether it has advanced those expenses, if the proceedings -
      - 31.2.3.2.1 are abandoned or exculpate the Director; or
      - 31.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 31.2.3.1.
- 31.3 The Company may purchase insurance to protect -
- 31.3.1 a Director against any liability or expenses contemplated in clause 31.2.2 or 31.2.3; or
  - 31.3.2 the Company against any contingency including but not limited to -
    - 31.3.2.1 any expenses -
      - 31.3.2.1.1 that the Company is permitted to advance in accordance with clause 31.2.2; or

31.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 31.2.3.2; or

31.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 31.2.3.1.

31.4 The Company is entitled to claim restitution from a Director or 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.

## 32 SOCIAL AND ETHICS COMMITTEE

32.1 If the Company in any 2 (two) of the previous 5 (five) years, scored above 500 (five hundred) Public Interest Score or would have so scored if the Companies Act had been in effect at that time, the Board shall appoint a social and ethics committee with the first such committee, if one is required, being appointed if the Company scored above the aforementioned Public Interest Score requirement or the Company has been exempted in terms of the Companies Act from having to have a social and ethics committee.

32.2 The social and ethics committee must comprise not less than 3 (three) Directors or Prescribed Officers, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years.

32.3 The social and ethics committee has the following functions –

32.3.1 to monitor the Company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to –

32.3.1.1 social and economic development, including the Company's standing in terms of the goals and purposes of –

32.3.1.1.1 the 10 (ten) principles set out in the United Nations Global Compact Principles; and

32.3.1.1.2 the OECD recommendations regarding corruption;

32.3.1.1.3 the Employment Equity Act; and

32.3.1.1.4 the Broad-Based Black Economic Empowerment Act;

32.3.1.2 good corporate citizenship, including the Company's –

32.3.1.2.1 promotion of equality, prevention of unfair discrimination, and reduction of corruption;

32.3.1.2.2 contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and

32.3.1.2.3 record of sponsorship, donations and charitable giving;

32.3.1.3 the environment, health and public safety, including the impact of the Company's activities and of its products or services;

32.3.1.4 consumer relationships, including the Company's advertising, public relations and compliance with consumer protection laws; and

32.3.1.5 labor and employment, including –

32.3.1.5.1 the Company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and

32.3.1.5.2 the Company's employment relationships, and its contribution toward the educational development of its employees;

32.3.2 to draw matters within its mandate to the attention of the Board as occasion requires;

32.3.3 to report, through one of its members, to Board at the Annual General Meeting on the matters within its mandate.

32.4 A social and ethics committee of a company is entitled to –

32.4.1 require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;

32.4.2 request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;

32.4.3 nominate a representative to attend any Members Council Meeting;

32.4.4 receive all notices of and other communications relating to any Members Meeting; and

32.4.5 be heard at any Members Council Meeting on any part of the business of the meeting that concerns the committee's functions.

32.5 The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

### **33 FUNDAMENTAL TRANSACTIONS AND CONVERSION**

33.1 The Company may not –

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

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

33.2 If the Company has voting members, any proposal to –

33.2.1 dispose of all or the greater part of its assets or undertaking; or

33.2.2 amalgamate or merge with another non-profit company,

must be submitted to the Members Council for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, of the Companies Act respectively.

33.3 Sections 115 and 116 of the Companies Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause 33.2.

### **34 RESPONSIBILITY OF DIRECTORS TOWARDS THE COMPANY**

Due to the Company's role as custodian of cricket in the area of jurisdiction and as the controlling authority for cricket in the region, as well as its new focus on transformation and development of cricket it is acknowledged that the Company has a major role to play in providing funds and other resources, in order to finance activities, which to promote, foster, encourage and provide facilities for the game of cricket.

### **35 DISPUTE RESOLUTION**

35.1 Subject to the Constitution of the Republic of South Africa, and save in circumstances where there is a need for urgent relief of a sort which cannot be obtained through the dispute prevention or resolution procedures contemplated in this MOI, no club, club member, official,

Prescribed Officer, Office Bearer or Member shall approach a Court of Law to decide a dispute it has with a body or individual falling under the jurisdiction of the Company.

- 35.2 Each club or Member falling under the jurisdiction of the Company shall ensure that it has incorporated into its constitution a dispute prevention and dispute resolution mechanism. The dispute prevention and resolution procedures set out herein may be duplicated by any club or member for convenience and with the necessary changes.
- 35.3 All disputes falling within the jurisdiction of a Company (including disciplinary matters), shall be resolved within the dispute prevention and dispute resolution mechanism of the Company.
- 35.4 The CEO shall decide, in consultation with the Directors, whether to resolve it through negotiation, mediation, by way of a round table meeting or whether to refer the dispute to arbitration.
- 35.5 Referral of any or all disputes to arbitration at club, affiliate, associate or company level, shall be done speedily, and in any event, not later than 10 (ten) Business Days after the date on which the decision or issue in dispute between the parties arose.
- 35.6 Issues in dispute, as referred to in clause 35.5, shall be recorded in Writing, and be conveyed to the relevant secretary of the club or associate, or the CEO of the Company as soon as possible and, in any event, not later than 10 (ten) Business Days after the date of referral.
- 35.7. Any dispute arising between the Members and the Company shall in the first instance be referred to the Company Chief Executive (or his duly authorized nominee) who shall endeavor to resolve the dispute as soon as possible with the parties concerned by way of a round table meeting. In the event that the dispute between the parties remains unresolved, either of the parties may elect to refer the dispute to mediation before the Dispute Commissioner on an expedited basis. Where the parties fail to so elect, the dispute shall be referred to Arbitration in accordance with clause 35.8 of the MOI. “
- 35.8 In the event of a dispute being referred to the CEO for arbitration, such referral shall be in Writing, and the referring party shall pay a deposit, as determined by the Board on a case by case basis, which may be refunded, depending on the outcome of the arbitration. The following procedures will apply to an arbitration -
- 35.8.1. a party requesting arbitration (“the requestor”) shall file with his request a notice of dispute which shall set out fully the grounds of dispute;
- 35.8.2. the parties to the arbitration shall be the requestor and any other parties to the dispute;

35.8.3. on receipt of a request for arbitration the CEO shall provide a list of 3 (three) names of possible arbitrators from which 1 (one) person shall be chosen by mutual consent of the parties involved in the dispute, as the arbitrator. The arbitrator shall be a legal practitioner of at least 10 (ten) years' experience. If the parties are not able to agree on an arbitrator, the CEO shall request from either the Law Society of South Africa or the General Council of the Bar of South Africa a list of suitably qualified candidates from which the parties shall choose the arbitrator and failing that, the CEO shall make the appointment;

35.8.4. within 2 (two) Business Days of the appointment of the arbitrator, the parties shall all sign a submission to arbitration which shall set out the disputes between the parties and shall confirm that the arbitration is to be held in accordance with the provisions of this MOI;

35.8.5. the date and time for the arbitration shall be fixed by the CEO in consultation with the arbitrator having due regard to the need for fairness and for speedy finalisation of the disputes;

35.8.6. the parties to the arbitration shall be entitled to attend the arbitration, and may be represented by members of the legal profession;

35.8.7. the venue of the arbitration shall be decided by the CEO in consultation with the arbitrator;

35.8.8. the arbitration shall be carried out informally and in a summary manner. It will not be necessary to observe strict rules of evidence or procedure; and

35.8.9. the decision of the arbitrator shall be final and binding.

35.8 In the event of a dispute at Member level having been decided in terms of an appeal process (such as, for example, a disciplinary matter), an aggrieved party may lodge a further appeal with the CEO in Writing, accompanied by the payment of a deposit as determined by the Board on a case by case basis. The CEO shall deal with the dispute in accordance with clause 35.8 above.

35.9 In the event that the dispute in question involves, or relates to, the CEO, the duties of the CEO as described in clauses 35.3, 35.4, 35.6, 35.7, 35.8 and 35.9 shall be assumed by the President.

## 36 PUBLIC STATEMENTS

36.1 The following Individuals will be authorised to give a public interview, opinion or statement -

36.1.1 the President (who is also chairperson of the Board) and CEO of the Company;  
and

36.1.2 any other person who has the necessary authority or permission to do so.

36.2 In the event of any of the abovementioned Individuals being requested to report on proceedings or results of any Members Council Meeting or Annual General Meeting, only the Individual who has acted as the chairperson at the relevant Members Council Meeting or Annual General Meeting will be authorised to be interviewed or to attend and speak at any media briefing.

36.3 If the President (who is also chairperson of the Board), CEO or authorised person expresses an opinion, as distinct from stating facts, and in particular when he knows that the opinion is not supported by the Company, he must make it clear that such view is expressed as his own.

Signed at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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**Rudolph Sebastian Claassen**  
**Chairman of the Board of Directors**



## 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>

"**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);

"**Auditing Profession Act**" means the Auditing Profession Act, 2005 (Act No. 26 of 2005);

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

"**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;

"**consideration**" means anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including—

- (a) any money, property, negotiable instrument, securities, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

"**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;

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

**"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);

**"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;

**"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;

"**material**", when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is—

- (a) of consequence in determining the matter; or
- (b) might reasonably affect a person's judgement or decision-making in the matter;

"**member**", when used in reference to —

- (a) a close corporation, has the meaning set out in section 1 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
- (b) a non-profit company, means a person who holds membership in, and specified rights in respect of, that non-profit company, as contemplated in Schedule 1; or
- (c) any other entity, means a person who is a constituent part of that entity;

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

"**non-profit company**" means a company —

- (a) incorporated for a public benefit or other object as required by item 1(1) of Schedule 1; and
- (b) the income and property of which are not distributable 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; "**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) —

- (a) at a shareholders meeting; or
- (b) by holders of the company's securities acting other than at a meeting, as contemplated in section 60;

"**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 auditor**" has the meaning set out in the Auditing Profession 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) -
  - (i) at a shareholders meeting; or
  - (ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised 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;

"**voting power**", with respect to any matter to be decided by a company, means the voting rights that may be exercised in connection with that matter by a particular person, as a percentage of all such voting rights;

"**voting rights**", with respect to any matter to be decided by a company, means—

- (a) the rights of any holder of the company's securities to vote in connection with that matter, in the case of a profit company; or
- (b) the rights of a member to vote in connection with the matter, in the case of a non-profit company;

"**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 emancipated 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 un-rehabilitated 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), 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**

<b>Person to whom the document is to be delivered</b>	<b>Method of delivery</b>	<b>Date and Time of Deemed delivery</b>
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 authorized 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 authorized 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</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>

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	document 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>